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ABSTRACT

This series of independent lessons draws from examples of real legal issues and encourages students to refer to Constitutional interpretations and precedent cases to arrive at judgments. The lessons include: (1) "Affirmative Action: How Level is the Playing Field?"; (2) "We Are a Nation of Immigrants"; (3) "Should Elected Office Be a Lifetime Job?"; (4) "Is There Room for the Menorah, A Nativity Scene, and Other Religious Symbols in the Classroom?"; (5) "Indecency on the Net: Should It Be Regulated?"; (6) "Ethics, An Issue for Every American"; (7) "Cloning. . . Are We Next? How Far Should It Go?"; (8) "A Religion? Or a Cult? What's the Difference? And What Rights Do Religious Cults Have?"; and (9) "Teen Driver's License Regulations." Each lesson includes descriptions of cases and background information, objectives, key concepts and vocabulary, student activities, student handouts, supplemental activities, and can be adapted for use with elementary students. (MM)

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PHI ALPHA DELTA LAW FRATERNITY INTERNATIONAL

LESSON PLAN OF THE MONTH

Series V, No. 1 - 9

1997

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BACK TO CLASS

AFFIRMATIVE ACTION:

How Level is the Playing Field?

Affirmative Action: How Level is the Playing Field?

I. LESSON DESCRIPTION:

This lesson focuses on the historic decision of President Lyndon B. Johnson to implement an official affirmative action policy and the current attempts by Congress, federal agencies, state and local governments, and special interest groups to re-define affirmative action and/or do away with affirmative action altogether. Through interactive classroom activities, students will examine the history which led up to the establishment of affirmative action by examining landmark U.S. Supreme Court cases. Additionally, students will examine the current political climate and popular opinion regarding affirmative action policies and programs.

II. OBJECTIVES:

1. Students will gain an understanding of the reasoning behind an affirmative action policy in the United States.

2. Students will examine the intense controversies that have erupted as a result of established affirmative action programs.

3. Students will form policies to handle past discrimination or equal protection scenarios by focusing on the work place, education, and communities.

III. KEY CONCEPTS & VOCABULARY:

- affirmative action
- civil rights
- due process
- EEOC
- equal protection
- fundamental rights
- initiative
- Jim Crow laws
- judicial review
- KKK
- quota
- reconstruction
- reverse discrimination
- segregation
- set-aside program
- standard of scrutiny
- strict scrutiny test
- subcontractor
- Title VII

IV. STEPS:

1. Invite an attorney, preferably someone practicing in the area of civil rights, to come to your class and participate in the lesson. Additional outside resource people who could help with the lesson include corporate human resources officers, government personnel recruiters, college/university equal opportunity program officials, and the state Human Affairs Commission officers.

2. Divide the class into six groups. Give each individual three pieces of paper (preferably Post-It notes) upon which to write ideas. Present each group with one of the following three fact patterns to write their solutions to on a piece of paper. Each problem will be assigned to two groups. After each individual in each group has completed three possible solutions to the problem presented, ask each group to go to one of three sheets of flip chart paper which you have labeled by group number and have hung around the room. Have each group pin or paste all of their solutions on the flipchart paper in no particular order. Then have each group arrange all of their notes in columns organized because the ideas expressed are similar. Have each group label their columns. Ask each group to report their solutions under the column categories. Ask students to discuss whether or not all groups represented in society should have some representation in professions such as teachers, attorneys, doctors, and police officers, whether or not they score higher on admissions tests. Discuss how this might be brought about. Discuss the ramifications of having a group of citizens excluded from participation in the professions or education.

First Problem: You live in a city with a large and diverse population. In fact, the percentage of the population made up of minorities has skyrocketed from 3% to 30% in the last decade. Women make up 50% of the population. The police force, though, is 100% caucasian and all male.

Second Problem: You live in a state that has one medical school. Your state's population is 60% Asian, 20% Caucasian, 10% African-American, and 10% Hispanic. The sole medical school offers a reduced tuition to in-state residents. Its enrollment is 95% Asian, 3% Caucasian, 1% African-American and 1% Hispanic.

Third Problem: A female 18 year old who plans on a military career attempts to get accepted to the state military school which has never in their 150 year tradition had a female cadet. It is the only military school in the state.

3. Set the stage for student group activity work by establishing class rules (i.e., students must work in their groups, everyone must be respected and demonstrate respect, everyone should participate, all students in the group should sign the finished project). Inform students that they will be divided into small groups and that each group will put together a pictorial presentation to teach the rest of the class about a historical moment relating to affirmative action. The pictorial is a diagram drawn on a large piece of paper. The paper is divided into 3 or 4 sections. Each section will be a capsule that can be used to capture a "freeze frame" of time, by use of photographs, pictures, drawings, collages, or other art forms. On the outside of the picture, a one-line sentence describes what the viewer is looking at. Students will make pictorials that reveal a period in history with a caption that describes the time period. Group members will make a small presentation about the events in their pictures.

4. Distribute Handout # 1. Divide students into 6 groups and number each group 1-6. Each group should read the selection corresponding to their group number. Students will form a mural of historical moments within the United States and examine the reasons why the United States has shaped a policy of affirmative action. Each historical capsule contains at least three ideas or distinctive moments in the history of affirmative action. Each group of students will create a mural or collage. Have students identify at least three ideas or moments from their assigned historical capsule. Then ask students to divide one of their sheets of paper into three or four sections, depending on how many ideas the group wants to present to the class from the historical capsules from Handout #1. Students must label each frame with a one sentence description that identifies the frame. Each frame should contain drawings, sketches, or pictures that depict the idea or moment. Each group should lead the class in a brief discussion of the capsule.

5. Distribute Handout # 2, U.S. Supreme Court Case History, to students. Divide students into groups of five. Have each group appoint a recorder to take notes and a reporter to report to the class the consensus of the group on the discussion questions. Have each group carefully read the case histories and the 14th Amendment. Each group should discuss and answer the questions at the end of Handout # 2. Have the groups write their responses to question 2 (b) on large pieces of paper taped on the walls around the classroom. Have each reporter go over the group's responses to question 2 (b). Lead the groups in a discussion of their responses to question 2 (c), 3, and 4.

V. GENERAL DISCUSSION

Go over the following discussion issues with the class:

1. The federal government's historical refusal to require women to register for the military draft.

2. Hypothetical situations. Present the following scenario: Your large city notices that less than 1% of the city construction contracts have been awarded to minority-owned businesses in the past five years. The city reviews the bids received for projects over the past five years and notices that minority-owned construction businesses actively applied for contracts but weren't getting the construction projects. The city decides that at least 30% of all city-funded construction projects must go to minority-owned construction businesses. Non-minority owned firms say that this would be unfair. The city cites their authority to right past wrongs. Discuss whether the city's policy is appropriate.

3. Hypothetical situations. Present the following scenario: It was affirmatively established in federal court that the city of Adelphi intentionally segregated school districts for over 30 years. The Board of Education, with the court's consent, institutes a desegregation plan which assures each school is racially balanced. This plan requires that students from any given neighborhood be bused to schools across town from where they live. This plan would require some students leave for school as early as 6:30 a.m. and take long bus rides to a school outside of their neighborhood. The inconveniences would affect students of all races, sexes and religions. Is this fair? Who would be in favor of this plan? Who against?

VI. ADDITIONAL ACTIVITIES:

1. For homework or extra credit, assign students Handout # 3. Ask students to compare the various Civil Rights Acts and to write a new Civil Rights Act of 1996 to cover the concerns of today. Students may want to consult the additional reading list for outside resources.

2. Have students bring in newspaper and magazine articles about equal opportunity, racism, and affirmative action.

3. Write to your Senators and to your Representatives and ask them to forward a copy to you of their official policies or statements on affirmative action.

4. Offer extra credit to students who agree to research affirmative action in India where the Caste system has a history of discrimination against so-called "out-casts" and others and where affirmative action is in place to try and correct the past wrongs.

5. Display the murals/collages around the school to inform other students of the historical background to affirmative action.

VII. RELEVANT LAW:

See Handouts # 1 and 2, refer students to the U.S. Constitution.
See Handout # 3 and the discussion questions on current events in affirmative action.

KEY CONCEPTS AND VOCABULARY

affirmative action:	An administrative action to right a wrong rather than to punish anyone for causing it. The most common form is the requirement that an organization take steps to remedy past discrimination in hiring or promotion.
civil rights:	Fundamental rights belonging to every member of society.
due process:	This clause is the 5th and 14th Amendment requirement that a person be treated fairly by the government.
EEOC:	Equal Employment Opportunity Commission, which is a federal commission established by the Department of Justice to pursue violations of civil rights in employment practices.
equal protection:	The clause in the 14th Amendment that prohibits states from discriminating against people by denying them equal protection of the laws.
fundamental rights:	Basic rights that are essential to everyone, such as the right to privacy or the right to marry. Not all rights are fundamental.
Jim Crow laws:	Laws, common in the South after the 1880's, which required African-Americans to use separate schools and other public facilities.
judicial review:	The power of the courts to review and reverse actions taken by the government that are offensive to the U.S. Constitution.
initiative:	A procedure by which the people can directly enact laws by voting, without the need for the laws to be passed by the legislature.
quota:	An assigned goal or minimum requirement. It can refer to allocating and preserving a certain number of contracts, jobs, or scholarships for minorities without regard to merit of the applicant.
reconstruction:	The period following the Civil War and until the election of President Rutherford B. Hayes when Union troops occupied the South.

reverse discrimination:	Unequal treatment of a person or persons resulting from favorable treatment of other persons who had been previously discriminated against.
segregation:	The separation or isolation of a race, class, or ethnic group from the rest of society. (Hence, desegregation is government action to end the separation and to "mix" groups together to end the isolation.)
set-aside program:	A program that is saved or reserved for a specific group, generally a group that has been disadvantaged or discriminated against in the past in that particular area (for example, groups trying for but not receiving city government construction contracts), in an attempt to make up for past discrimination.
standard of scrutiny:	The level of examination, or degree of investigation, used by courts in deciding constitutional issues in cases.
strict scrutiny test:	The constitutional test used by courts to examine cases in a much stricter fashion (the highest level of scrutiny). The court looks to see if the victim in the case is a member of a federally protected disadvantaged group, such as African-Americans or Latinos. The court then looks to see if anyone's "fundamental rights" have been violated. Finally, the court looks to see if there is any less complicated or less inconvenient way that the government could have accomplished its goal(s) without making it so difficult for the people involved.
subcontractor:	Someone who does part of the whole job; for instance, just pouring the concrete for highway construction, or just painting the lines down the center of the road.
Title VII:	The seventh section of the 1964 Civil Rights Act. Employers cannot discriminate on the basis of race, color, religion, sex, or national origin.

Handout # 1

Historical Capsules for Pictorial Presentations

In order to understand what "equal protection of the laws" means, a careful review of one of the most important parts of the 14th Amendment, the equal protection clause, is in order. "No state shall... deny to any person within its jurisdiction the equal protection of the laws." Through changes in how the U.S. Supreme Court has interpreted the equal protection clause, critical steps have been taken in an effort to end unfair discrimination in our nation.

The Thirteenth Amendment was added to the Constitution in 1865 after the Civil War. It abolished slavery in the United States, but it did not end prejudice against non-European Americans. To prevent states from discriminating against African-Americans, Congress adopted the Fourteenth Amendment in 1868. Contained within the Fourteenth Amendment, the equal protection clause is the most important constitutional protection of people against unfair discrimination by state and local governments. The Fourteenth Amendment initially was not enough, by itself, to prevent discrimination. Subsequent laws, rooted in the Fourteenth Amendment, were passed in attempts to remedy discrimination. People still argue today that more laws need be passed in order to protect against unfair discrimination.

GROUP 1. THE RECONSTRUCTION PERIOD

When civil war divided the nation, President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863 to free slaves of all regions of the country engaged in rebellion against the Union. However, the Proclamation did not address slavery in states belonging to the Union. Abolitionists flooded Congress with petitions asking for legislation to end all slavery. In 1865, Congress adopted the Thirteenth Amendment making slavery illegal.

The period after the Civil War, during which states that had seceded were being brought back into the Union, is called the Reconstruction Period. During this time, the Republican party dominated the federal government as it had done during the war. At that time, the Republican party had most of its strength in the northern states and was opposed to slavery in the southern states that had attempted to secede. The Democratic party, at that time, had most of its strength in the South. Many leaders of the former Confederacy, and former slave masters, were members of the Democratic party. It was expected that most of the newly freed slaves would vote for the Republican party, which strongly influenced the political battles fought over the rights of African-Americans during the Reconstruction Period. At the first postwar session of Congress, Congress and many state governments immediately passed laws designed to protect the rights of African-Americans. For a time after emancipation, under the Reconstruction Acts of 1867 and 1868, the Republican-dominated Congress forced radical Reconstruction on the South, consequently protecting the rights of African-Americans to vote and to hold office. During this time period, voters elected hundreds of local, state and federal Black officials including two U.S. Senators and 20 U.S. Representatives.

After the civil war, the federal government kept Union troops in the South to protect African-Americans and oversee reconstruction of the South. Although some southerners were in favor of freeing slaves, many were opposed, accustomed to seeing African-Americans as inferior. Congress attempted to implement laws designed to counteract those resistant to Black reconstruction and opposed to racial equality. Eventually, public support for protecting the rights of the newly-freed African-Americans grew weaker. Southern legislatures passed laws called "Black codes" in an attempt to convince the federal government that they would treat African-Americans fairly. Supposedly, these laws protected the rights of African-Americans to marry, own property, travel, work for

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pay, and sue in court. When the Union troops withdrew from the southern states and power over protecting the rights of African-Americans was left to the individual states, it became clear that the Black codes were, in fact, severe limitations on African-Americans. African-Americans could only marry other African-Americans. They could own property, but few Caucasians would sell property to African-Americans because they knew that land provided an economic power base which would threaten White domination.

GROUP 2. THE EFFECTS OF JIM CROW LAWS

After the passage of the 13th, 14th and 15th amendments, many Southern governments instituted a series of laws, beginning in the late 1880's, which disenfranchised southern African-Americans by instituting poll taxes, literacy requirements, and other barriers to voter registration.

Under the Jim Crow system of segregation, African-Americans were completely segregated from the White southern society. African-American Southerners were prohibited from using the same water fountains, restrooms, railroad cars, lunch counters, department store dressing rooms, and much more. In 1887, Florida passed the first state law mandating segregation on railroad cars, and was quickly followed by Mississippi, Texas and Louisiana. In 1890, Louisiana passed the "Act to Promote the Comfort of Passengers" which required railroad companies to provide "equal but separate accommodations" for African-American and Caucasian passengers.

Passage of Jim Crow laws continued largely until the civil rights movement began to take national shape in the 1950's and 1960's.

African-Americans were systematically denied opportunities to achieve economic, social, and political parity. Simple education remained unattainable. The educational disadvantages African-Americans faced had roots going back to the days when African-Americans were slaves. The law and practice of slavery (prior to the passage of the 13th Amendment) kept many African-Americans from learning (and teaching) how to read and write and denied them almost all rights available to free persons. After the passage of the 13th and 14th Amendments, it was still difficult for many Caucasians to believe that African-Americans could be their equals. The effect of Plessy v. Ferguson (1896), in which an African-American man challenged the constitutionality of segregating African-Americans and Caucasians and lost, was that states could, according to the Supreme Court, separate African-Americans from Caucasians in public facilities such as trains, buses, restaurants, hotels, schools, and even courtrooms. Even where facilities for African-Americans were worse than those for Caucasians, the federal government did not interfere to make states provide equal facilities.

GROUP 3. THE VIGILANTE MOVEMENT

The opportunities for African-Americans disintegrated beginning with the Disenfranchisement Period and the Jim Crow system of segregation. Vigilante groups of European-Americans such as the Ku Klux Klan intimidated and sometimes killed African-American people and European-Americans that helped African-Americans defend their rights. African-Americans could not seek protection from local and state governments as they and local law enforcement, courts, and juries became more and more biased against African-Americans and White sympathizers. Juries were always all White (juries were comprised of registered voters and Jim Crow provisions made voting registration by African-Americans impossible) and rarely decided a case in favor of an African-American. A reign of terror began in the South and quickly spread. White sympathizers were hung from trees, their throats slit, their houses burned. African-Americans were lynched with signs hung around their necks containing racial epithets and warnings. These acts often took place with the consent of local and state governments.

The Ku Klux Klan grew out of white Southern anger over the Civil War defeat and the Reconstruction period that followed. Originally, Klansman rode with white sheets over their heads and bodies through towns at night to leave the impression that the ghosts of the Confederate dead were riding through the countryside. Klansman would also create mischief in Black populated areas to scare African-Americans into thinking that ghosts of Confederate soldiers were wandering throughout the South. In time, mischief turned to malice and the KKK took the form of the pre-war slave patrols, whipping African-Americans found out at night, and forcing bloody clashes. By 1868, the KKK was known throughout the North and South and their focus was set on White supremacy and domination. They created a chain of command and established a set of rituals. During the summer of 1868, the now familiar tactics of the KKK fully exploded and the invisible ghosts became a known sinister force of masked and robed Klansmen focused on casting fear over African-Americans and White sympathizers. Threats were delivered to African-Americans, radicals, and perceived enemies in the form of night raids on individuals singled-out for rough treatment, mass demonstrations, lynching, whipping, assault, robbery, beatings, and property destructions. Government protection against the Klan would come almost 100 years later in 1964.

GROUP 4. 15TH AMENDMENT AND VOTING

The 15th Amendment was ratified in 1870 to effectively state that African-Americans had the right to vote. "Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. Section 2. The Congress shall have power to enforce this article by appropriate legislation."

Despite the 15th Amendment, in many Southern states, laws were passed to make it difficult or impossible for African-Americans to vote. Some states required people to take literacy tests in order to vote. These tests were difficult for most African-American men because they did not have a chance to get an education. The tests were also given unfairly so that even educated African-Americans would fail while European-Americans who could not read would pass.

States also made laws that allowed people who could not pass a literacy test to vote if their grandfathers had the right to vote. This was called "The Grandfather Clause." Caucasians could qualify because their grandfathers had had the right to vote; however, no African-Americans could qualify because their grandfathers had been slaves and not allowed to vote.

The Voting Rights Act of 1965 authorized federal officers to be sent to any part of the nation where voter registration was lower than 50%. The Act empowered federal authorities to remedy any unfairness that existed.

GROUP 5. TITLE VII

Following the Civil War, the 14th Amendment was enacted to protect the rights of African-Americans. However, the Amendment refers only to state actions; purely private actions, no matter how discriminatory, could not be challenged under the 14th Amendment.

In June of 1963, with the actions of African-Americans for civil rights gaining national attention, President John F. Kennedy called for legislation that would guarantee equality in employment, equal access to public accommodations, and non-discrimination in federally-assisted programs. Dr. Martin Luther King's March on Washington in 1963 and President Kennedy's assassination that same year helped move President Johnson to work for the passage of the Civil Rights Act of 1964.

The Civil Rights Act of 1964 makes it unlawful to discriminate in situations of public accommodations, employment, voting, education, and other activities involving federal funds. The Act is comprised of 11 sections (Titles) which cover the aspects protected under the Act. Title VII makes it unlawful to discriminate against any individual on the basis of race, color, religion, sex, or national origin. Title VII applies to all employers of fifteen or more people affecting interstate commerce, including unions and employment agencies. The constitutional basis for the Civil Rights Act of 1964 is the Commerce Clause (Article I, Section 8). The Commerce Clause gives Congress the authority to pass legislation to regulate employment relations affecting interstate commerce. Based on the Commerce Clause in the Constitution, Congress has the power to enforce Title VII and thus, protect citizens against private discrimination. This enables Congress to complete the individual protection that began with the 14th Amendment -- now protecting citizens against private discrimination as well.

GROUP 6. UNITING FORCES

After World War II, where African-Americans, Native-Americans, Mexican-Americans, Japanese-Americans, and members of other groups that had suffered discrimination for years served in the armed forces, a greater awareness of problems involving racial and ethnic discrimination strengthened the civil rights movement, working to protect and promote individual rights.

Help from Federal Courts

Organizations such as the NAACP looked toward the federal courts for help in gaining protection for their rights. They did not feel they could get help from their state legislatures or from Congress. Racial prejudice was too strong among many members of Congress and within state legislatures. Many felt that the federal courts, however, were less subject to racial prejudice because federal judges are appointed, not elected, and were less influenced by political pressures. Therefore, the federal courts played a very important role in protecting the constitutional rights of minorities.

Help from the Supreme Court

In 1954, the decision in Brown v. Board of Education established the principle that the equal protection clause of the 14th Amendment prohibited racial segregation in public schools. It invalidated the rule of "separate but equal." This decision opened the gates for any federal, state, or local laws or actions that allowed racial segregation to be challenged in court. This decision resulted in greatly increased activity by the civil rights movement throughout the nation.

Legislation passed by Congress

As demonstrations, sit-ins, marches, petitioning, picketing, and voter registration drives of African-Americans increased, Congress responded to the demands for racial equality by passing the Civil Rights Act of 1957, creating a Civil Rights Commission with limited powers to investigate violations of individual rights. The Act also authorized the Justice Department to file suits in court to protect voting rights. Three years later, Congress passed laws giving greater federal protection for voting rights and appointed federal officials to help African-Americans register and vote in safety.

The Executive Branch

In 1941, President Franklin D. Roosevelt created a Fair Employment Practices Commission to promote equal opportunity in employment. After President Roosevelt died, President Truman asked Congress to make the Commission permanent. However, Congress refused Truman's request. Truman then established the Presidential Committee on Civil Rights which made recommendations to Congress to pass legislation to eliminate poll taxes and to provide equal opportunity in education, housing, and jobs. Congress did not follow these recommendations.

In 1965, President Johnson signed Executive Order 11246, a measure not needing Congressional approval, to require all entities, both public and private, with 50 or more employees and receiving at least $50,000 in federal contracts, to file plans specifying goals and timetables to correct under-utilization of minorities and women in their work forces. Termed "affirmative action", this idea was intended to prevent future discrimination against these groups and to help remedy the effects of past discrimination. Johnson declared, "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'You are free to compete with all the others,' and still justly believe that you have been completely fair." President Johnson continued his affirmative action agenda by issuing a series of executive orders calling for employers and universities to create more job opportunities for minorities and women. Critics of affirmative action felt that this remedy resulted in "reverse discrimination."

Handout # 2

U.S. Supreme Court Landmark Case Summaries

Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896)
Facts: A Louisiana state statute required railway companies carrying passengers within the state to provide equal but separate accommodations for White and Black people, either by separate cars or by partition of cars. Passengers who refused to sit in the section to which they were directed were fined, and the railway company was allowed to refuse to carry such passengers and to be immune from suit. Plessy, a Black man, was sent to jail in Louisiana for refusing to leave the "Whites only" section of the train.

Issue: The Supreme Court examined whether the Louisiana statute violated the Thirteenth or Fourteenth Amendment.

Decision: The Supreme Court held that because the railroad provided equal facilities for Blacks and Whites, the rights of one race were not inferior to those of the other and thus it was not racial discrimination for persons of different races to be segregated when using those facilities.

Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954)
Facts: For decades, school districts allowed separate buildings for African-American students and for White students. Linda Brown, an African-American middle school student, and her parents brought suit in federal court against their school board's enforcement of a segregation policy. Linda had to walk past the public school for Whites on her way to the school for Blacks which was much farther away. The Brown's claimed that the schools their children attended were inferior to the White public schools. And, since such segregated schools were not equal and could not be made equal, the Browns were deprived of "equal protection of the laws" under the 14th Amendment. The Brown's were denied their injunction against the Topeka Board of Education even though the local Court held that there was "substantial inequality" in buildings, programs for students, qualifications, and salaries for teachers.

Issue: Does segregation of children in public schools solely on the basis of race deprive the children of a minority group an equal education? Does this segregation violate the 14th Amendment's equal protection clause?

Decision: The Supreme Court took two years to make a ruling in the Brown case. In 1954, the Court held, in Chief Justice Warren's opinion: *To separate* [children] *from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone*...[Therefore] *separate educational facilities are inherently unequal*...[and deny] *the equal protection of the laws guaranteed by the fourteenth Amendment.*

Bakke v. University of California Regents, 438 U.S. 265 (1978)
Facts: At the University of California at Davis, the medical school admissions policy for first year medical students called for the 100 openings to be filled according to an affirmative action admissions policy. The goal of the special admission program was to increase the number of medical students from minority groups. The school looked to facts citing that in 1967 there were only 735 medical students out of nearly 10,000 that were African-Americans. (In 1977, less than 2 percent of the practicing doctors in the country were African-Americans.)

The Davis program assigned 16 of the 100 openings to be filled by students who were members of the following minority groups: African-Americans, Asians, and Hispanics. Applicants with minority backgrounds were permitted to compete for all 100 vacancies, but White students could only compete for 84 slots, the ones not reserved for minority students. The result was that in 1973 several minority group members were admitted who had lower academic test scores than Allan Bakke, whose score was in the top 10 percent of those who had taken the medical school admissions test.

Twice Mr. Bakke applied to Davis and twice he was denied admission. In June 1974, Bakke filed an action charging that the university's admissions policy violated his rights under the California Constitution, Title VI of the 1964 Civil Rights Act, and under the 14th Amendment.

In 1977, the U.S. Supreme Court agreed to hear the Bakke case after the California Supreme Court decision ordering Davis to admit Bakke in the fall.

Issue: The Court reviewed the issue of whether the admissions policy of the university denied Bakke the right to equal protection of the laws guaranteed by the 14th Amendment.

Decision: In 1978, the Court decided in a five to four vote that Mr. Bakke was entitled to be admitted to the University of California medical school. Justice Powell stated, "The guarantee of equal protection can not mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal. " The decision was based on the equal protection clause and not on a violation of Title VII. The effect of the Bakke case was that universities could not create a set number of "slots" available for minorities. However, universities had a legitimate interest in developing a student body made up of a variety of individuals, and, as such, race could be taken into account as a "plus" in admissions decisions when considering other factors such as geographic diversity, personal talents, and leadership potential.

St. Francis College v. Al-Khazraji, 481 U.S. 604, 107 S. Ct. 2022, 95 L. Ed.2d 582 (1987)
Facts: A United States citizen born in Iraq brought suit against his former employer alleging that they discriminated against him on the basis of his Arabian race in violation of federal law.

Issue: Does federal law aimed primarily at banning discrimination against African-Americans also protect members of other ethnic groups that are considered to be Caucasian?

Decision: The Court held that the history of the federal anti-discrimination law showed Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination would be classified as racial in terms of present scientific theory.

Adarand v. Pena, 115 S. Ct. 2097 (1995)
Facts: Adarand Constructors, Inc., a Colorado construction company, sued the U.S. Secretary of Transportation, Frederico Pena, claiming that the agency's "subcontracting policy" was an unlawful "set-aside" program based on race. Mountain Gravel and Construction Co. was awarded a contract by the agency and they, in turn, subcontracted all the guardrail work to Gonzalez Construction even though Adarand Constructors, Inc. had submitted a lower bid. Gonzalez fit the federal government's definition of a "disadvantaged business" because it is a Hispanic-owned company. Adarand did not because it was owned by a Caucasian man.

Issue: Are government "set-aside" programs unconstitutional, and, if not, what standard of scrutiny should be used by courts in deciding these cases?

Decision: In June of 1995, the U.S. Supreme Court used Adarand v. Pena to make its most important affirmative action decision in five years. Many feel the decision opens up far more questions than it settles. By a 5-4 decision, the Supreme Court ruled that affirmative action programs must now meet what is called a "strict scrutiny" test. The five Supreme Court Justice majority ruled that the set-aside program challenged in this suit and all similar affirmative action standards enacted by Congress be subject to "judicial review" by using the "strict scrutiny" test. Using the strict scrutiny test in Adarand, the Court found that the government set-aside program did not meet the strict scrutiny standards, and, therefore had to end.

Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996)

Issue: May a law school use race as a factor in law school admissions?

Decision: No. "The use of race in admissions treats minorities as a group rather than individuals." Basing admissions decisions on the race of applicants is "no more rational on its own terms than would be choices based upon the physical size or blood type of applicants." The Bakke decision can no longer be used to justify the use of race in admissions to achieve a diverse student body.

Group Questions and Discussion:

1. What was the purpose of the 14th Amendment?
2. (a) What did the Supreme Court decide in the Plessy v. Ferguson case?
   (b) How would this decision affect your life if you were a Black student living in 1900?
   (c) How did the Court explain that the decision did not violate a citizen's right to equal protection under the law?
3. What are the differences in the decisions of Brown v. Board of Education and Plessy v. Ferguson? Why do you think the Court changed its previous decision?
4. How might the 14th Amendment be used to support the rights of women, the disabled, gays and lesbians, and others who believe they are not receiving equal treatment?

Handout # 3

The Civil Rights Acts

Directions: Read the following Civil Rights Acts. Compare the Acts and then write a new Civil Rights Act of 1996 to cover the civil rights concerns you feel need to be addressed (e.g. homosexuals, mixed marriages, new religions, etc). Refer to the Constitution, including the 14th Amendment, for direction.

Civil Rights Act of 1964

- Prohibits discrimination based on race, color, religion, or national origin in public accommodations (for example, hotels, restaurants, movie theaters, sports arenas). It does not apply to private clubs closed to the public.
- Prohibits discrimination in employment based on race, color, sex, religion, or national origin by businesses with more than 15 employees or by labor unions. (This section is commonly referred to as Title VII.)
- Prohibits discrimination based on race, color, religion, sex, or national origin by state and local governments and public educational institutions.
- Prohibits discrimination based on race, color, national origin, or sex in any program or activity receiving federal financial assistance. It authorizes ending federal funding when this ban is violated.
- Permits employment discrimination based on religion, sex, or national origin if it is a necessary qualification for the job.

Civil Rights Act of 1968 (amended in 1988 and 1992)

- Prohibits discrimination based on race, color, religion or national origin in the sale, rental, or financing of most housing.

(Enforced by the U.S. Department of Justice, the U.S Department of Housing and Urban Development, and private lawsuit.)

Civil Rights Act of 1991

- Addresses discrimination in the work place.
- Addresses discrimination at any point in the employment relationship, including private and governmental discrimination.
- Allows individuals who prove intentional employment discrimination on the basis of sex, disability, or religion to collect compensatory and punitive damages.
- Creates a limit on damages.

(Enforced by private lawsuit.)

ELEMENTARY ADAPTATION GUIDE

I. LESSON DESCRIPTION

Students will learn about the history of affirmative action in the United States. They will examine key moments in the history of slavery, the Reconstruction Period, and the civil rights movement by making a teaching mural.

II. OBJECTIVES

1. Students will learn about the history leading up to current affirmative action policies and practices in the private sector and with government actions.

2. Students will examine and prepare pictures and a presentation on one area of history regarding affirmative action.

III. KEY CONCEPTS AND VOCABULARY

affirmative action
civil rights
due process
EEOC
equal protection
fundamental rights
Jim Crow laws
KKK
reconstruction
segregation
subcontractor
Title VII

IV. STEPS: materials needed: art supplies, large pieces of paper, tape, and thick pens.

1. Begin the lesson by telling students that they are going to have a "pop quiz" on a few selected definitions. Hand out the answers to a few students but inform them that they may not share. No one may look at another's answers during the quiz. After the quiz has ended, have students exchange papers and correct them. Those students not having the correct answers receive a "-" while those students with the correct answers (i.e. the students receiving the answers) receiving a "+." Engage the class in whether it was fair that some students received the answers before the test while others did not. Ask students to describe how they felt, including those with the answers. Discuss with students a class rule that could be implemented so that quizzes are fair.

2. Review the 13th, 14th and 15th Amendments.

3. Ask students to define the words in the Key Concepts and Vocabulary list.

4. Explain to students that they will be learning about the history of affirmative action in the United States. Distribute Handout #1 and the materials for the teaching mural. Tell them to work in teams to make the teaching murals. Students should do the writing portion first, then work on the artwork. Divide students into groups of 2 or 3, depending on the class size. Assign each group the time period according to their group number.

5. Using their creative talents, have students write and illustrate the facts contained in their time period.

6. Going in group order, have each team share their work by discussing their illustrations with the class. Students should verbally explain the facts they are illustrating. Post the murals around the room for all students to examine.

7. Review Handout # 3, **Plessy v. Ferguson** and **Brown v. Board of Education of Topeka**. Lead a group discussion using the Group Questions and Discussion suggestions at the end of Handout #3.

V. GENERAL DISCUSSION: See General Discussion Page 3, Question #3.

VI. ADDITIONAL ACTIVITIES: See Additional Activities Page 3, Questions 1-4.

LESSON PLAN OF THE MONTH Series V, No. 2

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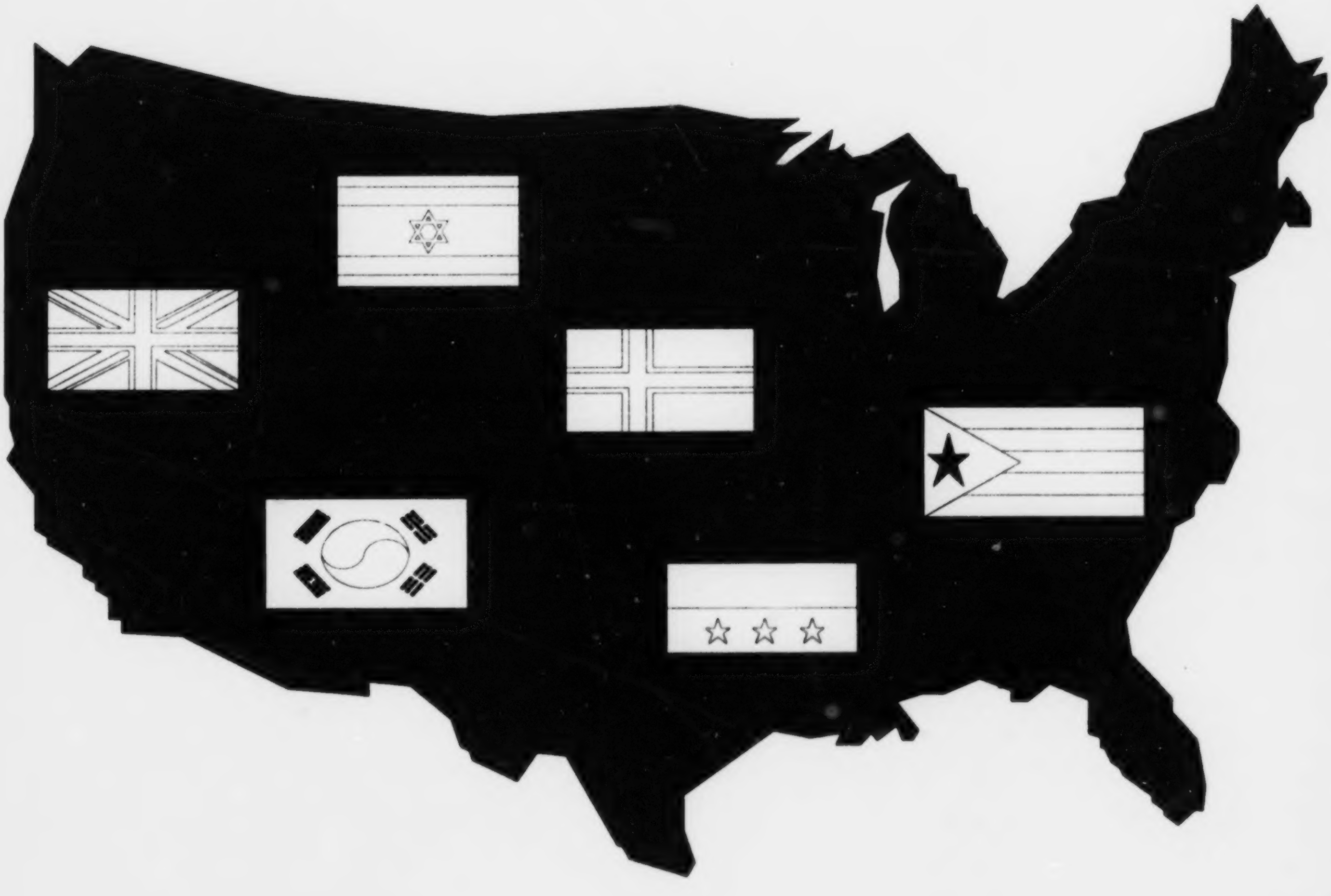
We Are A Nation Of Immigrants



We are grateful for the assistance and expertise provided to us by Millie Aulbur, Field Director for Law-Related Education, The Missouri Bar, in preparing the Elementary Adaptation Guide for this Lesson.

We Are A Nation Of Immigrants

To fully understand the concept of immigration, we need only reflect upon the fact that in each one of our family backgrounds, there is an ancestor who took the momentous decision to emigrate, to leave behind the familiar comforts and terrors of home and set out for foreign shores. It could not have been an easy decision or an easy journey. Emigrants faced weeks of arduous travel through unfamiliar and sometimes dangerous territory, miserable conditions on ships, and then the unknown - THE PROMISED LAND.

Except for the American Indians, all Americans descend from immigrants who arrived here in the past four centuries. They came from nations all over the world and settled in different regions of the United States. Some were warmly welcomed, others faced hardships and discrimination. Immigrants to America came for a variety of reasons -- the Irish to leave a land blighted by a potato famine; Russian Jews sought escape from pogroms and anti-Semitism; Germans left after the failed Revolution of 1848; Europeans, in general, came to escape religious persecution; the Chinese were lured by the promise of the Gold Rush and jobs to work on the railroad. Whatever reason impelled the immigrants to come, there is one common thread in each of these stories -- the desire to begin a new life in a new land blessed with religious and political freedom, and economic and social opportunity. In the "Promised Land," people's lives would be determined by education, accomplishment, and hard work, not by the social status of the old order.

I. LESSON DESCRIPTION:

This lesson plan will focus on the primary groups immigrating to the United States in the 19th and 20th centuries, and changes in immigration policy.

Throughout our nation's history, immigration policy has been shaped by the political, economic, and social climate of the day. When cheap labor was needed to build the railroads and fuel the industrial machine, it was in our national interest to allow an open border. Coping with the throngs of immigrants who crossed that border inevitably created a backlash, which led to restrictionism and quotas. Current problems exacerbated by illegal immigration -- crowded schools, overloaded social services, and crime -- have produced a reaction and a desire to close our borders to those who would enter the United States illegally. News stories often picture the plight of the illegal alien. This is nothing new in our history, but now it becomes more real to us because we consistently see stories about it on the nightly news.

II. OBJECTIVES:

Through a blend of historical and current perspectives, and through classroom discussion, reports, and projects, students will gain a greater understanding of the American immigrant experience.

1. Students will learn about immigration trends in the last two centuries and the reasons behind those trends.

2. Students will learn about changes in American immigration policy over the last 150 years, as American society sought to cope with absorbing large numbers of immigrants.

3. If you choose to assign additional research to your class, students will explore the contributions American immigrants have made to American culture and society.

III. KEY CONCEPTS & VOCABULARY:

- alien
- American Party
- Bracero program
- citizen
- Ellis Island
- Gentlemen's Agreement
- immigration
- Immigration Reform & Control Act
- Johnson-Reed Act
- legalization
- naturalization
- naturalized citizen
- resident alien
- temporary protective status
- undocumented ("illegal") alien

IV. STEPS

1. Have each student in your class verbally identify the country(ies) from which his/her ancestors came for the rest of the class. Using a world map, place a marker on each country identified. At the end of this brief exercise, point out the diverse backgrounds found within your own classroom and emphasize the fact that the United States, with the exception of Native Americans, is entirely made up of immigrants.

2. Distribute Handout #1 prior to the class period in which you will discuss immigration. Briefly review the terms at the beginning of class, paying particular attention that your students understand the difference between a citizen, resident alien, and an undocumented alien.

3. Distribute Handout #2 to the class. Divide students into groups of four. Have each group select one person who will report back to the class on the group responses to discussion questions. Have each group discuss the following after reading through Handout #2 (write these questions on the board):

   a) What are the primary reasons for immigrating to the United States?

   b) List the effects, both positive and negative, of having a large number of immigrants come to the United States.

   Have the spokesperson for each group report that group's responses. Write these on a flip chart or blackboard. Your students probably reported that "political freedom" (or something similar) is one primary reason for immigrating to the United States. If so, ask your class to specify some freedoms (constitutional rights, etc.) we have in this country that are not afforded elsewhere.

4. Distribute Handout #3 and have each student read this "Proposed Law" individually. Break students into groups of 3-4 (preferably different groups than before). Ask each group to cover the discussion questions following the proposed law. Have one student from each group record their answers on a sheet of paper. Have the recorders turn these sheets in to you at the end of the class period. Using this information, you can put together a handout to distribute to the class summarizing the responses if you wish to do so.

5. Re-convene the class and have your students vote whether to pass the proposed law by raising their hands. Write the number of students "for" and "against" on the board. Calculate this as a percentage of the class.

6. Distribute Handout #4 to "debrief" your students on the proposed law they just voted on and discussed. Compare the percentage of your class voting for and against the law to that of California

voters. This handout also contains important prior and subsequent history you should cover with your class.

V. ADDITIONAL ACTIVITIES:

1. Have students write a biographical report on a famous American immigrant and his/her contribution to American culture, business, science, or politics. Here are some suggested examples, while certainly others could be assigned.

    a. Henry Kissinger - politics
    b. Irving Berlin - music
    c. Justice Felix Frankfurter - law
    d. Enrico Fermi - science
    e. Albert Einstein - science
    f. Louis B. Mayer - entertainment
    g. Andrew Carnegie - industry
    h. Werner Von Braun - science
    i. Pablo Cassals - music

2. Have students research their family's immigration history, focusing on such things as their ancestors' country of origin, reason for emigration, when, place of settlement, and acculturation into American life.

3. Create a citizenship examination. Have each student contribute 10 questions on American history, government, and society. The teacher should compile 30 of those questions submitted by the students and give them to the whole class as a citizenship examination.

4. Instruct your students to contact the Immigration and Naturalization Service to find out the process required for becoming a citizen.

5. Have your students draft a new immigration law for the United States. What should the rules be? For example, how may immigrants can legally enter the country? How long before they can apply for citizenship? How long from application time to become a citizen? Have your students draft an application form as well.

6. Book Reports

    Suggested Reading:

    a. Our Crowd - Stephen Birmingham

    b. Real Lace: America's Irish Rich - Stephen Birmingham

    c. The Rest of Us: Rise of America's East European Jews - Stephen Birmingham

    d. How the Other Half Lives - Jacob Riis
    (Life on the Lower East Side of New York in early 1900s)

e. Immigration and Ethnicity: Integration of America's New Arrivals - Barry Edmonston/ Jeffrey Passel

f. Mexicans - Jodine Mayberry
(Life style, immigrant experience, and contribution of recent Mexican immigrants)

g. Strangers At The Gates Again - Ronald Takaki
(Asian-American Immigrants after 1965)

Handout #1

KEY CONCEPTS AND VOCABULARY:

alien:	One who is not a citizen of the country in which he or she is living.
American Party (also known as the "Know Nothing" Party):	This secret society, which later became an official political party contesting state and national elections in the 1850's, was founded with the expressed purpose to curb immigration. Party members pledged to vote only for Native-American candidates and to oppose the Roman Catholic Church. The chief goals of the "Know Nothing Party" were to establish quotas restricting the number of immigrants who would be allowed to enter the country and to require a 21-year residency for an alien to become a citizen.
Bracero program:	This program was in effect from 1942 to 1964 to allow low-skilled Mexican agricultural workers to enter the United States to harvest fruits and vegetables.
citizen:	A native or naturalized member of a nation who owes allegiance to its government and is entitled to its protection.
Ellis Island:	This island in New York harbor became one of the primary immigration processing stations from 1892 through the early years of the 20th Century. During the peak years of immigration, as many as 5,000 immigrants were processed each day. In 1954, the government ended the island's immigration function and in 1965 it was made part of the Statue of Liberty National Monument to honor the 20 million people who entered the United States through its doors.
Gentlemen's Agreement:	This was a secret agreement between the Theodore Roosevelt Administration and the Japanese government. To deal with the rising tide of resentment and anti-Asian sentiment, Congress had considered passing a law in 1907 to ban all immigration by Japanese nationals, as it had done in 1882 to exclude the Chinese. However, in the interests of preserving good relations between Japan and the United States, a Gentlemen's Agreement was reached whereby Japan pledged to stop issuing passports to Japanese laborers in return for a United States promise not to pass an exclusionary law. Although no specific exclusionary law was passed, a quota was placed on Japanese immigration by the Johnson-Reed Act of 1924.
immigration:	The movement of persons into a foreign country for permanent residence.
Immigration Reform & Control Act (IRCA):	This legislation, passed in 1986, was the result of a decade of study and political action by the White House, Congress, and a Select Commission to reform immigration policy. Its main purpose was to remove illegal aliens from the United

	States labor market. IRCA has two fundamental purposes. One is to grant legal status or amnesty to certain illegal aliens. The other is to impose penalties against employers who knowingly hire illegal aliens. These employer sanctions are intended to curb the demand for illegal alien labor.
Johnson-Reed Act:	This 1924 law set an annual limit of 150,000 immigrants from outside the Western hemisphere, and then divided that total into fixed national origin quotas. Because the quotas were based upon the ethnic composition of America in 1890, they were designed to favor admission of those nationalities who had been in the United States the longest. The Johnson-Reed Act favored admission of people from Western and Northern Europe and discriminated against the newer arrivals from Southern and Eastern Europe.
legalization:	The Immigration Reform and Control Act of 1986 allowed certain illegal aliens to adjust to legal status under Section 245 of the Immigration and Nationality Act. Legalization consisted of two phases -- temporary and then permanent residency. To be eligible for temporary residency status, aliens must have continuously resided in the United States in an unlawful status since January 1982, not be excludable, and have entered the country illegally before January 1982. Those who were granted temporary residency -- in the allotted time period between May 1987 and May 1988 -- had to apply for permanent residency within 30 months. If they failed to apply for permanent residency, their temporary status expired, and they were subject to deportation.
naturalization:	The process by which an immigrant becomes a citizen of the United States. The first step in the naturalization process is to get an application and a fingerprint card from the nearest office of Immigration and Naturalization Service (INS). The application to be used is Form N-400, "Application for Naturalization." The application, fingerprint card, and the Biographic Information Form, if appropriate, must be filled out according to the instructions and filed with the INS office. After certain actions concerning the application have been completed by the INS, the applicant must appear before a naturalization examiner for an examination. The applicant will be examined on the information submitted on the application for naturalization and on his or her English literacy and knowledge of the form of government and history of the United States. After the examination has been completed and the application approved, the applicant will be notified to appear at an oath ceremony where the applicant will be sworn in as a citizen of the United States. When the applicant appears at the oath ceremony, he or she takes an oath of allegiance to the United States. In doing so, he or she gives up allegiance to any foreign country and promises to support and defend the Constitution and laws of the United States.
naturalized citizen:	One who was born in another country and has been granted U.S. citizenship. A person seeking naturalization must establish good moral character and be a resident of the United States for five years.
resident alien:	A person admitted to permanent resident status in the country by immigration authorities but who has not been granted citizenship.

temporary protective status:	Nationals from certain war-torn nations such as Bosnia, Liberia, Somalia, and Lebanon may apply for temporary protective status. They are allowed to stay in America for a temporary period.
undocumented ("illegal") alien:	One who enters a country without registering at the border or who stays longer than allowed under a visa.

Handout #2

HISTORICAL OVERVIEW

The earliest European settlers who came to America were largely of English and Scots-Irish ancestry. They settled the English colonies and pushed the American frontier west from the Appalachians. French Huguenots came for religious freedom. In the early years of the new nation until the Civil War, the vast majority of newcomers were from Ireland, Germany, and Scandinavia. The great tide of European immigration -- primarily from Southern and Eastern Europe -- came to America's shores from 1890 to 1920. Coping with this tremendous influx of immigrants and trying to absorb them into American society led to a restrictive policy, which included national origin quotas that were outlined in the 1924 Johnson-Reed Act. Immigration laws were governed by the quota system until 1965. A 1965 law changed this focus to favor those immigrants with special skills and talents.

IRISH IMMIGRATION

One of the largest migrations in American history came in the 1840's from Ireland in the wake of the Potato Famine. The potato crop was the mainstay of the Irish peasants' diet and when the crop failed, Ireland became a barren land unable to feed its people. Famine swept the country and millions emigrated; over 1.5 million came to the United States where they settled primarily in large cities such as New York, Boston, Philadelphia, and Chicago.

THE GREAT FLOOD TIDE - IMMIGRATION FROM EASTERN AND SOUTHERN EUROPE

Prior to 1890, most immigrants who came to the United States were from Western and Northern Europe -- the Irish, Germans, Scots-Irish, and Scandinavians. In 1890, that trend began to change. Between 1900 and 1914, 3 million Italians arrived in the United States. The East European countries of Hungary, Yugoslavia, Czechoslovakia, Bulgaria, Greece, and Romania sent millions more immigrants. Two million Jews left Russia and Poland, fleeing pogroms and the Tzar's army. These immigrants took advantage of lowered steamship fares to flock to the Promised Land. Settling primarily in growing urban areas, they found jobs as unskilled labor for America's burgeoning industrial machine. Often senior family members would come to find jobs and save up their hard-earned money to buy ship's passage for wives, children, aunts, and uncles to join them in America.

CHINESE IMMIGRATION

The first Chinese immigrants came to the United States in the 1840's, leaving behind famine and strife, and attracted by the lure of gold in California. After the Civil War, the tremendous task of building the Central Pacific Railroad called for labor willing to work under arduous conditions for little pay. The Burlingame Treaty of 1868 provided for unlimited Chinese immigration. By the 1880's the construction of the railroad was largely completed and cheap Chinese labor was competing for other jobs. Anti-Chinese sentiment flared in the Western States where 100,000 Chinese had settled. In the wake of fear and discrimination, Congress passed the first Chinese Exclusion Act in 1882. Renewed in 1892, the Exclusion Act effectively prohibited Chinese immigration into the United States. Finally in 1943, as a goodwill gesture to its World War II ally, Nationalist China, America permitted a token number of Chinese to enter the country. A 1965 revision of the Immigration and Nationality Act has permitted 20,000 Chinese to immigrate each year.

POST-WAR REFUGEES FROM TOTALITARIANISM

Those seeking refuge from totalitarian dictatorships were in the forefront of immigration after World War II. Of the 5 million who entered the U.S. between 1945 and 1965, most were from Communist countries like Cuba, China, Hungary, East Germany, and Czechoslovakia. Many were highly educated with technical and managerial backgrounds. America offered opportunities for higher education and rewards for specialized skills, which attracted scientists, engineers, and technicians from Europe and the emerging nations of Asia, Latin America, and Africa. These new immigrants helped America attain its technological leadership.

CURRENT TRENDS

In the past 30 years, the great majority of those coming to the United States have emigrated from Latin America and Southeast Asia. The highest number of immigrants came from Mexico. The U.S. shares a 2,000-mile border with Mexico, and throughout our country's history, Mexicans have come across the border to live and work in the United States. Since the 1960's, immigration from Mexico has reached tremendous proportions. From 1961 to 1993, more than 4 million Mexicans arrived legally, making up more than 20% of total documented immigration into the United States. When undocumented arrivals are added to the numbers, the Mexican proportion of the total is well above 25%. Most Mexicans are concentrated in California and the Southwest, where they have an important influence on the culture and economy. Although many work in agriculture to harvest crops, like other immigrant groups, Mexicans have also settled in cities and become employed in fields such as the manufacturing and service industries. In recent years, an increasing number of people from Central America have emigrated to this country, seeking economic opportunity and political freedom.

The largest group of Asian nationals to migrate to the United States are from the Philippines. Early Filipino arrivals worked primarily in agriculture. However, more recent immigrants have been better educated and more qualified for professional jobs. After the Korean War, Koreans began immigrating to the United States. Many have become merchants and professionals. In the 1970's, Vietnamese sought refuge in America from their war-torn homeland. Until 1994, all immigrants from Vietnam were regarded as refugees, but since the regularization of diplomatic relations this is no longer a general policy.

In 1994, an agreement was reached between Cuba and the United States, which provides for a legal immigration program. Cubans with families residing in the United States who have job skills and have completed their secondary education can apply for the program.

Handout #3

PROPOSED LAW

The People find and declare as follows:

SECTION 1. That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state.

That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state.

That they have a right to the protection of their government from any person or persons entering this country unlawfully.

Therefore, the People declare their intention to provide for cooperation between their agencies of state and local government with the federal government, and to establish a system of required notification by and between such agencies to prevent illegal aliens in the United States from receiving benefits or public services in the State.

* * *

SECTION 5. (a) In order to carry out the intention of the People that only citizens of the United States and aliens lawfully admitted to the United States may receive the benefits of public social services and to ensure that all persons employed in the providing of those services shall diligently protect public funds from misuse, the provisions of this section are adopted.

(b) A person shall not receive any public social services to which he or she may be otherwise entitled until the legal status of that person has been verified as one of the following:

(1) A citizen of the United States.

(2) An alien lawfully admitted as a permanent resident.

(3) An alien lawfully admitted for a temporary period of time.

(c) If any public entity in this state to whom a person has applied for public social services determines or reasonably suspects, based upon the information provided to it, that the person is an alien in the United States in violation of federal law, the following procedures shall be followed by the public entity:

(1) The entity shall not provide the person with benefits or services.

(2) The entity shall, in writing, notify the person of his or her apparent illegal immigration status, and that the person must either obtain legal status or leave the United States.

(3) The entity shall also notify the State Director of Social Services, the Attorney General of the State, and the United States Immigration and Naturalization Service of the apparent illegal status, and shall provide any additional information that may be requested by any other public entity.

SECTION 6. (a) In order to carry out the intention of the People that, excepting emergency medical care as required by federal law, only citizens of the United States and aliens lawfully admitted to the United States may receive the benefits of publicly-funded health care, and to ensure that all persons employed in the providing of those services shall diligently protect public funds from misuse, the provisions of this section are adopted.

(b) A person shall not receive any health care services from a publicly-funded health care facility, to which he or she is otherwise entitled until the legal status of that person has been verified as one of the following:

(1) A citizen of the United States.

(2) An alien lawfully admitted as a permanent resident.

(3) An alien lawfully admitted for a temporary period of time.

(c) If any publicly-funded health care facility in this state from whom a person seeks health care services, other than emergency medical care as required by federal law, determines or reasonably suspects, based upon the information provided to it, that the person is an alien in the United States in violation of federal law, the following procedures shall be followed by the facility:

(1) The facility shall not provide the person with services.

(2) The facility shall, in writing, notify the person of his or her apparent illegal immigration status, and that the person must either obtain legal status or leave the United States.

(3) The facility shall also notify the State Director of Health Services, the Attorney General of the State, and the United States Immigration and Naturalization Service of the apparent illegal status, and shall provide any additional information that may be requested by any other public entity.

SECTION 7. (a) No public elementary or secondary school shall admit, or permit the attendance of, any child who is not a citizen of the United States, an alien lawfully admitted as a permanent resident, or a person who is otherwise authorized under federal law to be present in the United States.

* * *

(c) By January 1, 1996, each school district shall have verified the legal status of each child already enrolled and in attendance in the school district in order to ensure the enrollment or attendance only of citizens, aliens lawfully admitted as permanent residents, or persons who are otherwise authorized under federal law to be present in the United States.

(d) By January 1, 1996, each school district shall also have verified the legal status of each parent or guardian of each child referred to in subdivisions (b) and (c), to determine whether such parent or guardian is one of the following:

(1) A citizen of the United States.

(2) An alien lawfully admitted as a permanent resident.

(3) An alien admitted lawfully for a temporary period of time.

(e) Each school district shall provide information to the State Superintendent of Public Instruction, the Attorney General of the State, and the United States Immigration and Naturalization Service regarding any enrollee or pupil, or parent or guardian, attending a public elementary or secondary school in the school district determined or reasonably suspected to be in violation of federal immigration laws within forty-five days after becoming aware of an apparent violation. The notice shall also be provided to the parent or legal guardian of the enrollee or pupil, and shall state that an existing pupil may not continue to attend the school after ninety calendar days from the date of the notice, unless legal status is established.

(f) For each child who cannot establish legal status in the United States, each school district shall continue to provide education for a period of ninety days from the date of the notice. Such ninety day period shall be utilized to accomplish an orderly transition to a school in the child's country of origin. Each school district shall fully cooperate in this transition effort to ensure that the educational needs of the child are best served for that period of time.

SECTION 8. (a) No public institution of postsecondary education shall admit, enroll, or permit the attendance of any person who is not a citizen of the United States, an alien lawfully admitted as a permanent resident in the United States, or a person who is otherwise authorized under federal law to be present in the United States.

DISCUSSION QUESTIONS:

1. The Proposed Law states that the people are suffering economic hardship caused by the presence of illegal aliens. List the ways in which the presence of illegal aliens could economically harm United States citizens.

2. Locate the section of the law that deals with public social services. Who is entitled to receive public social services? Who is not entitled to receive such services?

3. Locate the section of the law that deals with publicly-funded health care. Generally, illegal aliens are not entitled to receive the benefits of publicly-funded health care. Are illegal aliens ever entitled to any publicly-funded health care benefits? If so, under what circumstances?

4. Identify the section dealing with public elementary and secondary education. What must the school district do if a student is determined to be an illegal alien?

   Do you believe that 90 days is enough notice before that child is prohibited from attending school?

   Why do you think this section of the law was drafted (what problems does it seek to address)?

   If it were up to you, what type of policy would you adopt in this area?

   Would the reason the student and his or her family immigrated to the United States make a difference to you in your policy making?

5. The proposed law you have been provided with excludes illegal alien students from elementary, secondary, and postsecondary public educational institutions. Do you believe that illegal aliens should be entirely prohibited from receiving a public education?

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What harm could result from excluding them from educational opportunities in the United States?

What harm could result from allowing illegal aliens to receive a public education in this country?

6. How would the history of this country have changed if the proposed law you have been provided with had been implemented in the last half of the 1800's?

Handout #4

Debriefing of the Proposed Law

The proposed law you just analyzed is actually a portion of California's Proposition 187. This initiative was submitted to the voters of the State of California at a general election on November 8, 1994. It was passed by a vote of 59% to 41% and went into effect the very next day.

Following the passage of this law, public interest groups and individual citizens brought a lawsuit to keep the California Governor, Attorney General, and other state officials from enforcing this law. Generally, they were successful. In League of United Latin American Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995), the court ruled that much of Proposition 187 was an illegal attempt by the state to regulate immigration. Under the Constitution, the authority to regulate immigration belongs exclusively to the federal government. Congress has exercised this power by passing the Immigration Reform & Control Act, the Immigration & Nationality Act, and other federal statutes. Because the federal government bears the sole responsibility for immigration matters, the states cannot alter the rules set up by Congress or pass any laws that regulate immigration and have a direct and substantial impact on it.

On December 14, 1995, the court entered an order halting the implementation and enforcement of sections 4, 5, 6, 7, and 9 of Proposition 187 (sections 4 and 9 are not included in your version of the "Proposed Law"). This means that even though the people of California passed the law, the sections of the Proposed Law you were given that cover public social services, publicly-funded health care, and public elementary and secondary schools are not enforceable. This is the current status until further order of the court.

Prior Relevant Supreme Court Decision: Plyler v. Doe, 457 U.S. 202 (1982)

In 1982, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits states from excluding children who are illegal aliens from attending public schools. The Court focused on the fact that the children of illegal aliens are not accountable for being in this country -- it is their parents who have made the choice to willingly bring the family into the United States illegally. It was the Court's view that these children should not be penalized for a situation over which they have no control. Basic education was seen as a necessity without which a child would be handicapped for the rest of his or her life.

This is still good law today and will remain the rule unless the Supreme Court overrules itself. Generally, the Court follows its own precedent.

Current Federal Immigration Law

In September of this year, H.R. 2202 (the Immigration in the National Interest Act) was passed by both the House and the Senate. President Clinton is expected to sign the legislation into law in the near future. This legislation would take a tougher stance on illegal immigrants. It would double the number of border patrol officers over a five year period, establish an expedited deportation process for illegal immigrants convicted of crimes in the United States, deny most federal benefits to illegal immigrants, and increase the income level required before a legal immigrant or citizen can sponsor a relative for entry into the United States, among other provisions.

ELEMENTARY ADAPTATION GUIDE

I. Lesson Description and Objectives:

Students will learn about immigration trends in the last two centuries and about the reasons for those trends.

Students will learn about various immigration policies over the last two centuries, and the reasons for those policies

Students will explore the contributions of American immigrants to American culture.

II. Key Concepts and Vocabulary

alien
American Party
Bracero Program
citizen
Ellis Island
immigration
Immigration Reform and Control Act
legalization
naturalization

III. Steps and Materials Needed

1. Begin the lesson by defining immigration.

2. Have the students brainstorm about immigrants' reasons for coming to the United States. List the reasons on the board or on a large sheet of paper. After the list is completed, ask the students to identify which reasons they think are related to freedoms guaranteed by our Constitution.

3. Provide the students with the background recited on pages 1, 5-7 of this lesson, including the various immigration policies in the 19th and 20th centuries.

4. Make a timeline of when the various ethnic groups comprised the largest group of immigrants to America. Begin with the Irish in the 1840's. (This information is in the group discussion information found earlier in this lesson.)

5. Using a world map, have the students mark with string or yarn where American immigrants came from and where in the United States they originally came. For example, Irish immigrants largely came to New York or Boston so the string would go from Ireland to those two major cities. On the other hand, Asian immigrants usually came to California as did Latin American immigrants.

6. Ask the students to interview their parents, grandparents, or acquaintances about becoming American citizens or stories they have heard about their ancestors' pride in becoming American citizens. Students should share stories from their interviews with the entire class.

7. Hold a "Celebration of Ancestry" day in the classroom. Students could dress in ancestral clothing, bring in examples of ethnic food and ethnic music, display family mementos depicting ancestral background, or have a family member come to the class and share a story about immigration and/or naturalization. After the celebration, students should

discuss the contributions all of the various ethnic groups have made to American culture and how immigration policies have affected that influence.

8. Discuss the various immigration policies implemented by the government. Brainstorm about the reasons for the policies: economic, prejudice, fear, etc. Students should then choose one of the immigration policies and write a one-page position paper on it. Students could then assume the roles of politicians and debate both sides of the policies.

9. Each student should be asked to choose an immigrant who has made a notable contribution to American society, write a report about the person, and read the report to the class. Encourage the students to look at immigrants in government, the arts, sports and the sciences. After each report, the teacher should lead the class in a discussion about how the immigrant demonstrated good citizenship.

10. Attend a naturalization ceremony. After attending the ceremony, discuss what reactions the new citizens displayed upon becoming naturalized.

11. Divide the students into groups of 3 to 4 students each. Using the library and the Internet, the students should study the system of government of five countries other than the United States. Each group should assume that they as a group must immigrate to one of the five countries and then choose to which country they will immigrate. Each group should share its choice and the reasons for their choice with the entire class.

LESSON PLAN OF THE MONTH Series V, No. 3

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Should Elected Office Be A Lifetime Job?

We are grateful for the assistance and expertise provided to us by Millie Aulbur, Field Director for Law-Related Education, the Missouri Bar, in preparing this lesson.

SHOULD ELECTED OFFICE BE A LIFETIME JOB?

I. LESSON DESCRIPTION

This lesson explores the issue of term limits for United States Senators and Representatives. Fifteen states had term limits initiatives on their ballots in the 1996 General Election. All 50 states have grass roots movements calling for Congress to amend the Constitution by providing for term limits for Representatives and Senators. This lesson will introduce the students to these grass roots movements and explain the provisions of the initiatives passed in 10 of the 15 states that had this issue on the 1996 ballot.

II. OBJECTIVES

1. Students will become familiar with the current grass roots movements to amend the Constitution to include term limits for Representatives and Senators.

2. Students will be able to evaluate different positions on term limits.

3. Students will be able to take and defend a position on term limits.

4. Students will become familiar with the information available on the Internet on this topic.

III. KEY CONCEPTS AND VOCABULARY

Americans for Limited Terms (ALT)
Article I, U.S. Constitution
Article II, U.S. Constitution
Article V, U.S. Constitution
grass roots movement
incumbent
initiative
17th Amendment
term limits
22nd Amendment

IV. STEPS AND ACTIVITIES

Materials needed: Sufficient handouts for students, the text of the United States Constitution, stopwatches or clocks for debates, and access to the Internet where possible.

1. Introduce the lesson by defining what is meant by **term limits**[1] in today's political arena.

2. Ask the students if they can think of any federal or state elected officials whose positions have term limits. (Answers will vary in each state.) For federal officials, direct the students to the text of the **22nd Amendment** to the United States Constitution, which provides that a president may hold office for only two four-year terms. Then have the students examine

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[1] Terms highlighted in bold are defined later in the lesson.

Article II of the United States Constitution, which describes qualifications and election procedures for the president. Brainstorm with the students as to why the framers of the Constitution did not find it necessary or perhaps did not desire to provide term limits for a president. Brainstorm as to why the 22nd Amendment was eventually proposed by Congress and ratified by the states. Have the students note the time in history that this Amendment was made--1951. (The discussion should eventually lead to the concern caused by Franklin Delano Roosevelt running for and being elected to an unprecedented fourth term.) End the discussion with these questions for homework or extra credit: Do you think the framers of the Constitution would have favored the 22nd Amendment if they had been present in 1951 when the amendment was passed? Why do you think that Congress, in 1951, did not go one step further and propose term limits for themselves?

3. Examine the text of **Article I of the Constitution**, which describes the qualifications and election procedures for Representatives and Senators. Ask the students if they see any mention of term limits. After the students have confirmed that there are no term limits, explain that there has recently been a large **"grass roots"** effort to set term limits for members of Congress. Explain to the students that "term limits" in most grass root organizations, such as the **Americans for Limited Terms**, means two terms for Senators for a total of 12 years and three terms for Representatives for a total of 6 years.

4. The following information should be shared with the students to help them understand the historical context of the grass roots movement for term limits:

   a) The framers of the Constitution debated term limits for all elected officials at the Constitutional Convention in 1787.

   b) After passage of the 22nd Amendment, President Harry S. Truman advocated term limits for Congressmen.

   c) In the 1992 and 1994 elections a total of 23 states passed, by a vote of the people, **initiatives** that limited the terms of U.S. Senators and Representatives.

   d) In 1995, The Supreme Court of the United States in **U.S. Term Limits, Inc., V. Thornton,** 115 S. Ct. 1842 (1995) held that an amendment to the Arkansas State Constitution providing for term limits was unconstitutional because it was not in conformity with the procedures set forth in **Article V of the U.S. Constitution** (See Handout #1 for the required procedures.) Because this is a U.S. Supreme Court decision, it is binding on all the states and means that no state can pass an amendment regarding term limits without following the procedures set forth in Article V of the Constitution.

e) In the 1996 election, 15 states again had initiatives on the ballots that dealt with term limits. They passed in 10 of those states. You can locate a breakdown of the states at http://www.termlimits.org/ on the Internet

5. To understand the grass roots movement supporting term limits, the students need to understand why the U.S. Supreme Court struck down the 1992 and 1994 initiatives, which provided for term limits for state and federal elected officials. The Court found that: 1) Adding term limits to the election procedures for Congressional representatives clearly had the effect of amending the U.S. Constitution and 2) A single state could not amend the Constitution by merely passing an initiative that said for the state, U.S. Senators and Representatives will have term limits. The Court explained that it would be contrary to the intent of the framers of the Constitution for some states to have term limits for their Congressional representatives while other states did not. The Court found that term limits would have to apply to all Congressional representatives or none, and would have to be the subject of an Amendment to the U.S. Constitution, proposed and ratified as provided by Article V of the Constitution.

6. As a follow up to the explanation of the Supreme Court's holding, distribute Handout #1, the text of Article V of the Constitution, and have the students highlight the two ways that the Constitution allows for proposed amendments: 1) When two-thirds of both Houses of Congress so propose, or 2) When two-thirds of the states' legislatures ask for a Constitutional Convention for a particular amendment (*Today that means 34 of 50 states would have to apply to have a Constitutional Convention on term limits.)* Point out that the 1992 and 1994 initiatives did not follow either one of the above procedures and have students discuss the pros and cons of each method.

7. Explain to the students that this is not the first time in history that a "grass roots" movement urged Congress to amend the Constitution because Congress would not do so on its own. Have students look again at Article I of the Constitution and point out the election procedure of U.S. Senators as provided for in the original Constitution--state legislatures chose Senators, not the people in a popular election as is the procedure today. Now have the students look at the **17th Amendment** that was passed in 1912 . This Amendment changed the process for electing Senators from a vote by state legislatures to a popular election. Prior to passage of the 17th Amendment, between 1893 and 1902, the House of Representatives ***five*** times passed legislation calling for an amendment that would allow for direct election of the Senators, but the Senate rejected it each time. Obviously, Senators chosen by the state legislatures were reluctant to change a system that brought them into office.

   Many became frustrated with the Senate and put initiatives on their state ballots to change the system. Starting in Oregon in 1908, non-binding primaries were held where voters expressed their choice for Senator. Candidates running for the state legislature had to sign one of two statements. One statement said that, if elected, the candidate would support the people's choice for the Senate. The other stated that, if elected, the candidate would not promise to follow the people's choice for Senate. On the actual ballot for election of state legislators, it was denoted which statement the candidate had signed. By 1912, half of the Senate was elected in processes like this. Furthermore, 30 of the 31 necessary states had filed applications to call for a Constitutional Convention on the issue. The Senate quickly caved in and passed the 17th Amendment. This kind of process for putting pressure on the Congress to act when it is reluctant to propose an Amendment is informally known as the **Oregon Plan of 1908**.

8. Distribute Handout #2 which describes the initiatives that were passed in 10 states in the 1996 election. Have students compare these initiatives to the Oregon Plan of 1908. Discuss the provisions of these initiatives. Advise the students that all 50 states also have grass roots movements aimed at getting the state legislatures to make application for a Constitutional Convention on term limits.

9. Have the students explore the various sides of the term limits debate. Distribute Handouts #3 and #4. Handout #3 contains arguments and quotes from opponents of term limits. Handout #4 contains arguments and quotes from proponents of term limits. Have the students divide into groups of four to evaluate the arguments of both sides.

10. After the students have evaluated the arguments for both sides, have them prepare to debate the issue. The class should be divided into two groups--one pro and one con. Two students from each side should be chosen to do the actual debating. Other students will help the debating students formulate their arguments. Some students should serve as a committee to set up debate rules and act as timers. After the first debate, students should be asked to argue the opposite side and new students should be chosen to be the debating students.

11. Distribute Handout #5. These are captions from actual cartoons on the subject of term limits. Divide the class into groups of 4 to 5. Have each group create a cartoon to go with a particular caption.

12. Have the students explore this subject on the Internet at http://www.termlimits.org/ This site will give them the actual authors of some of the quotes from Handouts #3 and #4, and they will be able to view the actual cartoons referenced in Handout #5.

V. KEY CONCEPTS AND VOCABULARY DEFINED

Americans for Limited Terms (ALT):	The most active of the grass roots movement organizations striving to amend the Constitution to provide for Congressional term limits. It is a coalition of state-based, term-limits groups that believes Congress should play no role in the term limits debate.

Article I, U.S. Constitution:	Describes the powers of the House of Representatives and the Senate, the election procedures for both, and the qualifications for both.
Article II, U.S. Constitution:	Describes the powers of the president the vice-president, the election procedures for both, and the qualifications for both.
Article V, U.S. Constitution:	Describes how the Constitution may be amended.
grass roots movement :	A group of people acting as a political group to promote independent popular opinion on a particular issue.
incumbent:	A person currently in office.
initiative:	The process by which voters can propose a law and compel officials to submit it to the electorate for a vote.
17th Amendment:	Provides for election of U.S. Senators by popular election rather than by the state legislatures. Passed in 1912.
term limits:	Restrictions on the number of times a person can run for a particular elected office.
22nd Amendment:	Provides that no person shall be elected more than twice to the office of president.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Have students research why the framers of the Constitution did not trust the "popular vote" as evidenced by the establishment of the Electoral College for presidential elections and the election of Senators originally by the state legislatures.

2. Have students explore the subject of term limits for federal judges. They are currently appointed for life. Students may want to interview various legal professionals in their community on this subject.

3. Brainstorm with the students as to whether the current terms of office are most effective. For example, would it be better for a president to have one six year term of office; would it be better to have four-year terms of office for Representatives?

4. Have the students conduct a survey among their peers or in the general community to gauge current views on term limits for members of Congress.

Handout #1

ARTICLE V, U.S. CONSTITUTION

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to the Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal suffrage in the Senate.

Handout #2

1996 INITIATIVES

The term limits initiatives passed by 10 states in the 1996 election basically contain the same provisions:

1. A proposed U.S. Constitutional Amendment to establish term limits for Representatives and Senators, the limits being two terms in the Senate and three terms in the House.

2. Instructions to the states' U.S. Representatives and Senators to use all delegated powers to pass the proposed amendment. This includes a) voting in favor of the proposed amendment, b) seconding the proposed amendment if it lacks a second, c) providing sponsorship for such legislation if a sponsor is needed, d) rejecting any attempt to delay the passage of the amendment, and e) voting against any proposed constitutional amendment that would establish term limits longer than those in the currently proposed amendment.

3. Any **incumbent** who failed to follow these directions and ran for re-election would have the following words printed next to his or her name on the ballot: "DISREGARDED VOTERS' INSTRUCTIONS ON TERM LIMITS." Any non-incumbent running for U.S. Representative or Senator would have the opportunity to take the "term limits" pledge. If they declined to take the pledge, the words "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" would be printed next to their name on the ballot.

Handout #3

ARGUMENTS AGAINST TERM LIMITS

1. "...a Congress composed entirely of newer members would mean a Congress where the expertise about policy, 'where the bodies are buried,' how to make things happen in committees, in federal agencies, and in all the myriad centers of influence would be held by others--Congressional staffs, perhaps, along with permanent bureaucrats, lawyers, lobbyists, think tankers, and media people--in other words, just the people this reform is intended to defuse!" --**Civitas, A Framework for Civic Education**, a 1991 Center for Civic Education publication, p. 610.

2. "At the same time, by limiting lawmakers to eight or twelve years, a term limit would send more lawmakers every two years out to find jobs. Some would go back to their districts as many do now. But many would become Washington lawyers, lobbyists, and other players in the informal scene. And many of those, knowing they had only a short time to serve in Congress, would begin immediately currying favor with interests to prepare for their next jobs, thus intensifying the relationships reforms are trying to block." --**Civitas**, p. 610.

3. An amendment for term limits is not necessary. The people already have it in their power to impose term limits--the election booth. The people used that power in 1992 and in 1994 when they elected large numbers of new Congressional representatives.

4. "...term limits simply fly in the face of common sense. The worst possible thing to do now, during a time of great change anyway, is to try out some radical, arbitrary gimmick like term limits, which corrects a problem that does not exist." --Rep. Peter King as reported in **The Congressional Record** (3/29/95)

5. "The only way to become a better, more efficient, more professional legislator is through years of practical experience here in Congress. Richard Russell, Sam Rayburn, Everett Dirksen and Hubert Humphrey did not become the legislators they did through limited terms. Just the opposite is true. They became more proficient and experienced lawmakers through long years of dedicated service, learning their craft and honing their skills." -- Senator Robert C. Byrd as reported in the **Roll Call** (10/19/95)

6. "I have always agreed with former President Ronald Reagan's contention that the current constitutional two-term limit on presidents should be repealed because it restricts the people's choice. The same would be true if term limits were applied to Congress." -- Rep. Dale Kildee in a letter to his constituents

7. "I believe in the term limits we already have, the term limits established by our Constitution. It establishes a limit on terms of House members of 2 years, and on Senate members of 6 years." --Rep. Maurice Hinchey in a letter to his constituents

Handout #4

ARGUMENTS FOR TERM LIMITS

1. As U.S. Representatives and Senators have begun to see public office as a lifetime career, they have voted themselves raises and fabulous pension plans.

2. "Asking an incumbent member of Congress to vote on term limits is a bit like asking a chicken to vote for Colonel Sanders." --Rep. Bob Inglis in **Reader's Digest**, October 1995

3. "There are a number of different arguments for term limits, but all can be summed up simply: In recent years, the Soviet Union's Communist Party Central Committee and Britain's House of Lords have more turnover than Americans' Congress. Despite what was seen as a political revolution in 1994, nothing really changed. Although Democrats lost heavily, the overall House re-election rate still ran roughly 90%...In short, what political scientist Mark Petracca calls the 'poison' of professional politics remains. Most incumbents still win, and careerists still largely dominate policy. Only term limits are likely to reduce the electoral bias toward congenital politicians and the ensuing policy bias toward expansive government." --***Bias for Incumbents*** by Doug Brandow, **The Washington Times**, October 17, 1996

4. "The longer you stay in public office, the more distant the outside world becomes." -- Former Senator Warren Rudman as quoted in ***Conflict of Congress***, **The Wall Street Journal**, April 12, 1996

5. "Term limit supporters contend that mandatory turnover is crucial to improving government. They say limits make it more responsive to citizens and ensure that more people have chance to hold office...'Term limits in Arizona are producing more aggressive legislators seeking to make an immediate impact...We are moving away from the professional politician concerned with his career to the citizen legislator who wants to change things and return to real life.'" -- ***Limit Terms, And They Go Home*** by Claude R. Marx in **Investors' Business Daily**, March 13, 1996

6. "Over time, more candidates with a wider diversity of views will seek legislative 'open seats' made available by the regular turnover, reinvigorating political life and restoring legitimacy to our representative system...That's why we needed term limits. And that is why we still need term limits." --***Term Limits Reinvigorate Politics*** by Paul Farago in **The Salem (Oregon) Statesman-Journal**, January 19, 1996

7. "Nothing so strongly impels a man to regard the interests of his constituents as the certainty of returning to the general mass of people from whence he was taken." --George Mason, who refused to sign the Constitution because mandatory rotation in office (term limits) was not in it.

Handout #5

CARTOON CAPTIONS

Make your own cartoon to fit these captions taken from actual cartoons about term limits.

1. *Incumbent: Defined*
2. *Will Work for Food...Will Work Forever*
3. *I'm looking for a job that satisfies my lust for power.*
4. *Wow: That's the Best Term Limits Plan I've Heard Yet!*
5. *He has old-fashioned {congressional} values....*
6. *Senator Burnout*

ELEMENTARY ADAPTATION GUIDE[2]

I. LESSON DESCRIPTION

Students will learn why there is currently a debate in this country about term limits for members of Congress.

II. OBJECTIVES

1. Students will learn what "term limits" mean.
2. Students will learn how the U.S. Constitution provides for term limits.
3. Students will learn how to interview an adult about a current issue.

III. KEY CONCEPTS AND VOCABULARY

Article I, U.S. Constitution
Article II, U.S. Constitution
incumbent
term limits
22nd Amendment

IV. STEPS

Materials needed: Text of the U.S. Constitution, two pieces of white poster board, magic markers.

1. Ask the students how many of them have heard about "term limits" in the news. Explain what is meant by term limits. See KEY CONCEPTS AND VOCABULARY DEFINED in main lesson.

2. Refer students to Articles I and II of the U.S. Constitution. Point out the sections on qualifications of the various elected officials and the elections procedures. (Note: Explain to the students that the 17th Amendment changed the election of Senators to a direct, popular election.) Ask the students if they see any reference to term limits anywhere.

3. Ask the students to look at the 22nd Amendment, which provides for term limits for the president. Place the passage in historical context for the students-- it was ratified in 1951, not too long after President Franklin Delano Roosevelt ran for and was elected four times to the presidency. Brainstorm with the students about why they think Congress proposed this amendment and the people passed it. Ask them why they think Congress did not, at the same time, propose time limits for themselves.

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[2] The current term limits debate and movement is quite complicated. However, upper elementary students should be able to understand the basic concept of term limits.

4. Ask the students how they feel about term limits. Why is it good to have them? Why should there not be term limits?

5. Help the students, as a class, to devise questions to interview one or two adults about their views on term limits. Discuss the proper method to arrange and conduct an interview. After students have had the opportunity to conduct the interviews, have a sharing session. Label one poster board "For" and one "Against". On these posters, list the various reasons the interviewees gave for supporting or opposing term limits.

6. Organize a debate about term limits, allowing the students to use the views from their interviews. Encourage students to switch sides for a second debate.

LESSON PLAN OF THE MONTH Series V, No. 4

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Is There Room For The Menorah, A Nativity Scene, And Other Religious Symbols In The Classroom?

Religions Of The World

We are grateful for the assistance and expertise provided to us by Millie Aulbur, Field Director for Law-Related Education, the Missouri Bar, in preparing this lesson.

IS THERE ROOM FOR THE MENORAH, A NATIVITY SCENE, AND OTHER RELIGIOUS SYMBOLS IN THE CLASSROOM?

I. LESSON DESCRIPTION

This lesson explores various issues concerning freedom of religion as it relates to public education. This lesson examines prayer in the classroom, graduation prayer, teaching of religion in the public schools and holiday traditions.

II. OBJECTIVES

1. The students will become familiar with the Free Exercise and Establishment clauses of the First Amendment.

2. The students will learn the current law regarding issues pertaining to religion and the public schools.

3. The students will learn how religion and certain holiday traditions can be part of a school's curriculum without violating the Establishment Clause.

III. KEY CONCEPTS AND VOCABULARY

academic
conform
denigrate
devotional
Establishment Clause
Fourteenth Amendment
Free Exercise Clause
inculcate
inhibit

IV. STEPS AND ACTIVITIES

Materials needed: Sufficient handouts for all students.

1. Do a short introduction of the religious freedoms provided for in the First Amendment. Distribute Handout #1 to the students, which is the text of the First Amendment. Ask them to underline the words that provide for freedom of religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." Discuss with the students the meaning of the Establishment Clause and the Free Exercise Clause. *See* **KEY CONCEPTS AND VOCABULARY DEFINED.**

2. Ask the students if they see anything in the First Amendment that would prohibit a public school from allowing religious practices at school. Draw the students' attention to the words, "Congress shall make no law . . ." Ask the students if they know why these words have been construed to mean that a public school, as well as Congress, cannot act to support a particular religion or prohibit the free exercise of religion. Explain to the students that the Fourteenth Amendment made the Bill of Rights applicable to all state and local governments and that public education is a function of both

state and local government. (If necessary, explain the roles of state and local governments in providing public education.)

3. Brainstorm with the students about periods in world and United States history where governments have favored the establishment of religion and\or interfered in the free exercise thereof. Discuss how the history of governmental involvement with religion may have influenced the authors of the Bill of Rights.

4. Ask the students if they think religion can have any role in the public schools. After the discussion, read to the students the following quote from Associate Justice of the U.S. Supreme Court the Late Tom C. Clark (also a Past Supreme Justice of Phi Alpha Delta Law Fraternity) in the case of Abington v. Schempp, 374 U.S. 203 (1960), a case in which the Supreme Court found that prayer and Bible reading in the classroom violated the Establishment Clause:

> [I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

5. As a follow up to Activities #3 and #4, distribute Handouts #2, #3 and #4. Handout #2 is information from the pamphlet entitled, *Religion in the Public Schools Curriculum: Questions and Answers*. (This pamphlet is sponsored jointly by various religious and educational groups, including the National Council for the Social Studies, 3501 Newark St., N.W., Washington D.C. 20016.) Handouts #3 and #4 contain information from the pamphlet entitled, *A Parent's Guide to Religion in the Public Schools*, published by The Freedom Forum First Amendment Center, Vanderbilt University, 1207 18th Avenue, South Nashville, TN 37212. Have the students read these handouts and react to the information in the handouts and compare that information with Justice Clark's statement in Abington v. Schempp.

6. Distribute Handout #5. Divide the class into groups of 4 or 5 students each. Ask the students to evaluate each situation described in Handout #5 and decide whether the activity violates the First Amendment. The students should use the information in Handouts #2, #3 and #4 as guidelines for evaluation. After the groups have had time to discuss Handout #5, the class as a whole should discuss the situations described in Handout #5. The answers to #5 are provided below and are based on current law:

   1. Unconstitutional. Prayer and Bible reading are devotional and constitute the practice of religion. In Engle v. Vitale, 370 U.S. 421 (1962), the United States Supreme Court held that prayer and Bible reading in a classroom is a religious activity, and therefore, violates the Establishment Clause.

2. Unconstitutional. Prayer is devotional. In Lee v. Weisman, 112 S. Ct. 2649 (1992), the United States Supreme Court held that a prayer said by a clergyperson before graduation is a religious activity and a violation of the Establishment Clause.

3. Constitutional. According to *Religion in the Public Schools: A Joint Statement*, "student participation in before or after-school events, such as 'see you at the pole,' is permissible. School officials may neither discourage nor encourage participation in an event."

4. Probably constitutional. In Lynch v. Donnelly, 465 U.S. 668 (1984), the Supreme Court held that a nativity scene situated with other secular holiday symbols on a courthouse lawn was a "cultural" display and not violative of the First Amendment's Establishment Clause.

5. Unconstitutional. See County of Allegheny v. ACLU, 492 U.S. 573 (1989). The Supreme Court held that a purely religious display violated the First Amendment's Establishment Clause.

6. Not enough information is available. If only religious music is presented in the program, it probably is not constitutional. (See #5 above.) However, if Handel's Messiah is "part of a balanced program of secular and sacred selections representative of the culture and season," then it does not violate the Establishment Clause. See Florey v. Sioux Falls School District, 619 F.2d 1311 (8th Cir.), *cert. denied*, 449 U.S. 987 (1981).

7. Unconstitutional. According to *Religion in the Public Schools: A Joint Statement*, "when acting in their official capacities, teachers may not engage in religious activities with their students. However, teachers may engage in private religious activity in faculty lounges." According to *A Parent's Guide to Religion in the Public Schools*, "teachers may be present at religious club meetings as monitors, but they may not participate in club activities."

8. Constitutional, if the course is a study about religion, not the teaching of religion, as pointed out in Handouts #2 and #3, and in Justice Clark's statement in Abington v. Schempp.

9. Constitutional. According to *Religion in the Public Schools: A Joint Statement*, "because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing student listeners."

10. Kent's actions are not protected by the constitution. According to *Religion in the Public Schools: A Joint Statement*, "students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive." When the teacher asked Kent to pray silently, she was still respecting his right to free exercise and protecting other students from being compelled to listen to Kent's prayer.

11. It depends on the school's dress code. According to *Religion in the Public Schools: A Joint Statement*, "religious messages on T-shirts and the like, may not be singled out for suppression." Some schools have dress codes prohibiting students from wearing any clothing with symbols or words on them. Since the school would not be singling out clothing with religious symbols or

expressions on them, the school would not be violating a students' free exercise of religion. However, if a school's dress code does not prohibit clothing with symbols or words, it would be unconstitutional to specifically prohibit clothing with religious symbols or words.

12. The students' actions are not protected by the Constitution. According to *Religion in the Public Schools: A Joint Statement*, "students have the right to distribute religious literature to their schoolmates, subject to those reasonable time, place, and manner or other constitutionally-acceptable restrictions imposed on the distribution of all non-school literature. Thus, a school may confine distribution of all literature to a particular table at particular times. It may not single out religious literature for burdensome regulation."

13. The students' right to free exercise of religion has not been violated. According to *Religion in the Public Schools: A Joint Statement*, "students may express their religious beliefs in the form of reports, homework and artwork, and such expressions are constitutionally protected . . . These assignments should be judged by ordinary academic standards of substance, relevance, appearance and grammar." Mr. Wallace did not flunk his students on the grounds that their papers were religious in nature, but because they clearly did not meet the criteria he set out. Mr. Wallace had the authority, under school guidelines, to limit the topic for his students' papers. In this case, the topics chosen by the students were not relevant to the assignment.

14. Unconstitutional. According to *Religion in the Public Schools: A Joint Statement*, "Students may not be forced to wear gym clothes that they regard, on religious grounds, as immodest."

15. More information is needed. Under the federal Equal Access Act, secondary public schools must allow students to form religious clubs if the school allows other non-curriculum-related clubs to meet during noninstructional time. A non-curricular club is any club not related directly to a subject taught or soon-to-be taught in the school. Schools do have the right to ban all non-curriculum clubs. If Maryville High School allows other non-curriculum clubs to meet on school grounds, they must allow the Christian Action Club. If they ban all non-curriculum clubs, they may refuse to allow the Christian Action Club to meet on school grounds.

16. Ms. Clavett's actions are academic instruction and, therefore, constitutional. Mr. Berry's actions are probably not constitutional because he appears to be promoting attendance at a Christian Church. If students wanted to know about services, they could be directed to the phone book to make their own inquiries.

V. KEY CONCEPTS AND VOCABULARY DEFINED

academic:	Relating to study or formal education.
conform:	To make similar or to make someone comply with a rule or belief.
denigrate:	To speak ill of.

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devotional:	Relating to a religious observance or prayer.
Establishment Clause:	The portion of the First Amendment that prohibits government from establishing or favoring the establishment of a particular religion.
Fourteenth Amendment:	The Amendment that makes the Bill of Rights applicable to the states.
Free Exercise Clause:	The portion of the First Amendment that guarantees every citizen the right to practice his\her religious beliefs without interference by the government.
inculcate:	To teach others by frequent instruction or repetition.
inhibit:	To prohibit, forbid.

VI. ADDITIONAL ACTIVITIES FOR EXTENSION AND ENRICHMENT

1. Have the students design a curriculum that would teach about religion and not violate the Establishment Clause. The curriculum should include music, art and works of literature.
2. Have the students research how other countries that have public education and the guarantee of religious freedom handle religion in public schools.

Handout #1

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Handout #2

Q. What is meant by "teaching about religion" in the public schools?

A. The following statements distinguish between teaching about religion in public schools and religious indoctrination:

- The school's approach to religion is academic, not devotional.
- The school may strive for student awareness of religions, but should not press for student acceptance of any one religion.
- The school may sponsor study about religion, but may not sponsor the practice of religion.
- The school may expose students to a diversity of religious views, buy may not impose any particular view.
- The school may educate about all religions, but may not promote or denigrate any religion.
- The school may inform the student about various beliefs, but should not seek to conform him or her to any particular belief.

(This information is an excerpt from the pamphlet, *Religion in the Public Schools Curriculum: Questions and Answers*, sponsored jointly by various religious and educational groups, including the National Council for the Social Studies, 3501 Newark St., N.W., Washington D.C. 20016.)

Handout #3

In a recent statement of principles,* a broad range of religious and educational groups agreed to the following description of religious liberty in public schools within the First Amendment framework:

> Public Schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect. Public Schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study about religion, where appropriate, as an important part of a complete education.

*The "recent statement of principles" refers to *Religion in the Public Schools: A Joint Statement*. This statement was issued by the Clinton administration and was written and endorsed by thirty-six major religions.

(This information is an excerpt from the pamphlet entitled, *A Parent's Guide to Religion in the Public Schools*, published by The Freedom Forum First Amendment Center, Vanderbilt University, 1207 18th Avenue, South Nashville, TN 37212.)

Handout #4

RELIGIOUS HOLIDAYS AND THE PUBLIC SCHOOL

Religious holidays offer opportunities to teach about religion in elementary and secondary schools. Teaching about religious holidays, which is permissible, is different from celebrating religious holidays, which is not. Study of holidays serves academic goals of educating students about history and cultures as well as about the traditions of particular religions.

The use of religious symbols as examples of religious or cultural heritage is permissible as a teaching aid or resource. Religious symbols should only be displayed on a temporary basis as part of the academic program.

Sacred music may be sung or played as part of a school's academic program. School concerts that present a variety of selections may include religious music. The use of music, art, drama, or literature with religious themes is permissible if it serves a sound educational goal in the curriculum, but not if used as a vehicle for promoting religious belief.

(This information is an excerpt from the pamphlet entitled, *A Parent's Guide to Religion in the Public Schools*, published by The Freedom Forum First Amendment Center, Vanderbilt University, 1207 18th Avenue, South Nashville, TN 37212.)

Handout #5

THE FIRST AMENDMENT AND PUBLIC SCHOOLS

Read each situation carefully. Using the guidelines provided in Handouts #3, #4 and #5, decide if the activities described below are protected by the Constitution (constitutional) or are prohibited by the Constitution (unconstitutional).

1. Ms. Jones' 6th grade class began every day with a prayer and a Bible passage.

2. Central High School began every graduation ceremony with a prayer by a community clergyman. The administration made sure that the prayer was said on a rotating basis by clergymen from all the religious denominations in the community.

3. Some students at Clark High School wanted to pray together before school each morning. They distributed an announcement stating that students who wanted to pray together should meet by the flagpole each morning at 8:00, fifteen minutes before classes began.

4. Every year Magnolia High School decorated its lawn for Christmas. The decorations consisted of Santa in his sleigh with his reindeer, a Christmas tree, a Nativity scene, and Frosty the Snowman.

5. Upstate Middle School was given a beautiful Nativity scene and a Menorah by the local ecumenical group. They were the decorations for the school foyer every December.

6. Glendale Junior High School had a Christmas concert every year. Each year, part of Handel's Messiah was sung.

7. A group of students wanted to form a Bible study group. They knew Mr. Smith, the biology teacher, was a Sunday school teacher at his church. They asked him to facilitate the group. He agreed to do so.

8. Valley High School added a class on Religions of the World to its curriculum.

9. Alice always said a prayer before eating her lunch in Pleasant Valley High School. She sometimes said it aloud and sometimes said it silently.

10. Kent always said a prayer before beginning his Calculus test. He said it aloud and disturbed other students who were trying to concentrate on their tests. When the teacher asked him to pray silently, he refused.

11. A group of students attended a summer camp with a religious theme. They had several T-shirts as souvenirs from the camp. They asked the administration if they could wear them at their school, the Clinton Public High School.

12. A group of Harris High School students wanted to distribute free Bibles to students. The administration agreed they could do so in the school foyer before school, but that they were not to use coercive tactics. The students insisted that they also be allowed to give the Bibles away in the cafeteria during lunch time. The school administration refused this request because the school does not allow any organization to distribute literature in the cafeteria.

13. Seniors at Penn High School must write a term paper as part of the graduation requirements. Each English teacher decides the range of topics for his\her class. Mr. Wallace told his class that all of their term papers should be written on some environmental issue. Two of his students decided to write on completely different topics--one wrote on the life of Jesus Christ and the other on modern foundations for Islam. He flunked both students for failing to follow directions. The students claim their right to free exercise of religion has been violated.

14. John was an outstanding basketball player and easily made Clayton High School's varsity team. However, his religious beliefs would not allow him to wear shorts in public so he asked the coach if he could wear long pants for his uniform. John's parents said they would pay the cost of having long pants made to match the team's uniform. The coach stated that he would refuse to let John play if he would not wear the team's regular uniform. The coach admitted that there was no safety consideration involved in his refusal. He just thought the team looked much better when all the players were dressed exactly the same.

15. Some students at Maryville High School wanted to form a Christian Action Club. They asked the school if they could meet after school in one of the classrooms. The school refused to allow this because of the of club's religious purpose.

16. Easter was approaching. Several students in Ms. Clavett's history class at Roosevelt High School were unclear about the significance of Easter in Christian religions and asked her to clarify this issue. Ms. Clavett explained the religious significance of Easter to Christian religions. Mr. Berry, another history teacher, overheard the explanation and asked Ms. Clavett if he could add a few remarks. He wrote the addresses of various Christian churches on the board and denoted the times their Easter services were held.

ELEMENTARY ADAPTATION GUIDE

I. LESSON DESCRIPTION

Students will become acquainted with the Establishment and Free Exercise Clauses of the First Amendment. Students will also explore how religion and the celebration of certain holidays can be part of a school's curriculum without violating anyone's religious freedoms.

II. OBJECTIVES

1. Students will learn about the Establishment and Free Exercise Clauses of the First Amendment.
2. Students will learn about how religion can be part of a school's curriculum.
3. Students will learn how religious holidays can be part of a school's curriculum.

IV. KEY CONCEPTS AND VOCABULARY

Establishment Clause
First Amendment
Free Exercise Clause
religion
rights

V. STEPS AND ACTIVITIES

1. Ask the students if they know what rights are. As a class, define rights.
2. Depending on the background of the students, the teacher may want to briefly explain that the rights of all Americans are contained in the Constitution. The teacher should then explain that part of the Constitution--the First Amendment--provides for many freedoms. One of those freedoms is the freedom of religion.
3. Spend some time defining religion.
4. Ask the students why they think that the colonists valued freedom of religion so highly. Talk about the various religious groups that have come to the United States seeking religious freedom: Puritans, Quakers, Catholics, Jews.
5. Explain in simple terms what is meant by the free exercise of religion--the right to worship where you want and the right not to worship at all. Explain in simple terms the Establishment Clause--the government cannot like one religion more than another. This is also means that the public school cannot like one religion more than another and that it cannot force any student to have a religion.

6. Explain to the students that prayer is part of their right to free exercise and free speech. When and how would prayer be appropriate at school? When would a student's praying become inappropriate? (See main lesson for background).

7. Ask the students to write a paragraph about what freedom of religion means to them.

8. Brainstorm with the children about what freedom of religion has to do with the observance of holidays like Hannukah, Christmas and Easter in school. Tell the children it is all right for them to write stories about holiday traditions in their families or to share aloud about traditions with other students. Explain that a school may have plays, musical programs, or bulletin boards about holiday traditions and that they can include religious symbols or music but cannot be strictly about religion. (For background, see main lesson.)

9. Have the children design a bulletin board and musical program for a holiday celebration that would show how a holiday is part of their culture and at the same time would not violate the First Amendment.

VI. KEY CONCEPTS AND VOCABULARY DEFINED

Establishment Clause:	The part of the First Amendment that prohibits government from favoring any religion.
Free Exercise Clause:	The part of the First Amendment that protects a person's right to worship as she\he wants.
First Amendment:	The first change made to the Constitution and the Amendment in which the rights of religion, speech, press, assembly, and petitioning the government are guaranteed.
religion:	Belief in God or a god or gods.
rights:	Things that someone is entitled to.

LESSON PLAN OF THE MONTH **Series V, No. 5**

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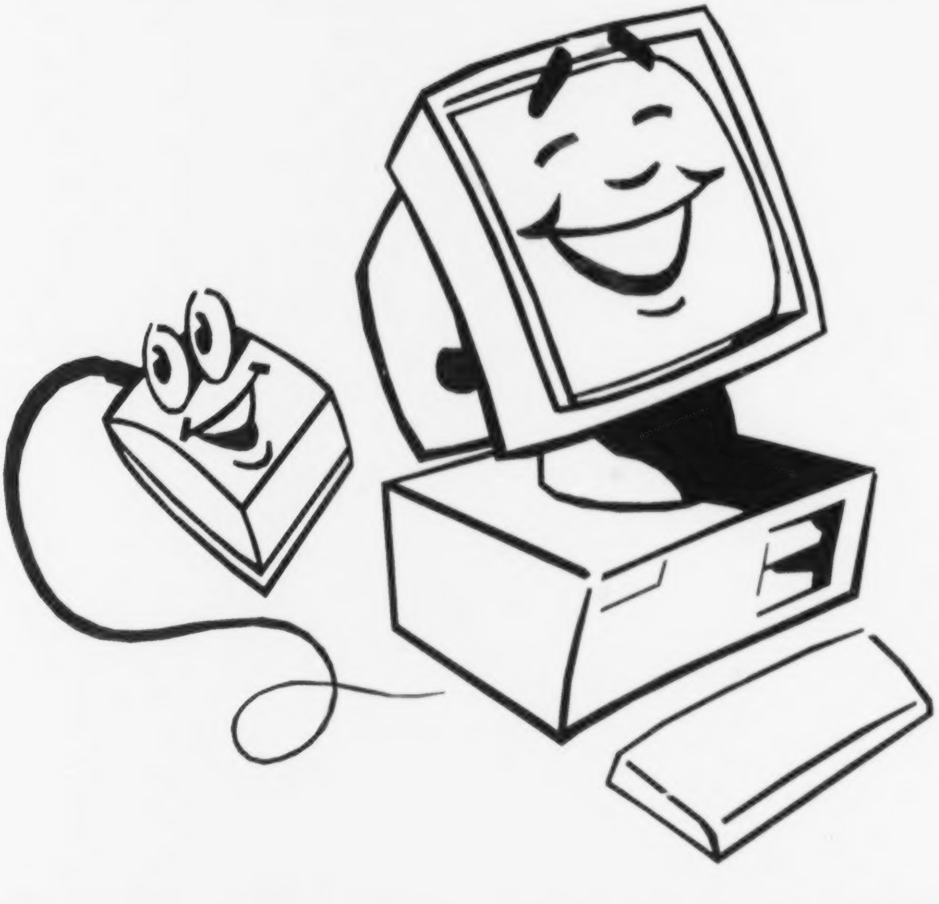
INDECENCY ON THE NET:



SHOULD IT BE REGULATED?

INDECENCY ON THE NET: SHOULD IT BE REGULATED?

I. LESSON DESCRIPTION

This lesson covers the issue of the First Amendment right to free speech and its relation to the Internet. Historical and contemporary issues dealing with the Internet are covered. Students study the major cases in this area, use their critical thinking skills to evaluate the arguments on both sides, formulate their own opinions, and then draft a written "Supreme Court" opinion expressing their views.

II. OBJECTIVES

1. Students will learn the history of the Internet as well as the latest information about current trends related to the Net.
2. Students will understand the First Amendment right to free speech and how it relates to the Internet.
3. Students will learn about the most recent cases dealing with the First Amendment and various forms of communication technology.
4. Students will evaluate the arguments on both sides of the Internet indecency issue and formulate a written opinion about it.

III. KEY CONCEPTS AND VOCABULARY

American Civil Liberties Union
Communications Decency Act of 1996
First Amendment
Precedent
Preliminary Injunction
The Internet

IV. STEPS AND ACTIVITIES

Materials needed: *Sufficient handouts for all students.*
Time requirements: *You will need two class periods to cover the material if you choose to do all of the steps listed below.*

1. Begin this lesson by taking a poll (through a show of hands) to determine how many students in the class have used the Internet at least once. Of those who have been on the Internet, take a poll to find out how often they use it (every day, once a week, etc. and how many hours per

day/week). If there are students in the class who have never used the Internet and you feel comfortable inquiring into the reasons behind that, ask them whether it is because they do not have access to it, or for other reasons such as parents who will not let them use it. Ask students whether their parents try to control their use of the Internet or have concerns about it. This exercise will provide you with an indication of the level of experience your class has had with the Internet.

2. Briefly discuss the terms contained in the "Key Concepts and Vocabulary Defined" section of this lesson with your students.

3. Distribute Handouts #1 & #2 to the class and have the students review them for historical perspective and a current understanding of the Internet. Ask students to explain what they believe to be the reasoning behind the two warnings contained at the end of Handout #2. Have them share Internet "horror stories" they have heard, read about or experienced themselves and then brainstorm about how to avoid getting into those situations.

4. Distribute Handout #3. Have someone in the class read the text of the First Amendment aloud and ask another student to identify which right protected by the Amendment would be most applicable to the Internet and why. The response should be the freedom of speech and the reason is that the Internet is a form of mass interactive speech. Now have students count off from 1 to 4. Assemble all students sharing the same number in the same group. Assign each of the four groups one of the four cases briefed in Handout #3. Each group should identify a reporter who will report to the class after reading and discussing the case. Give the groups sufficient time to read their assigned case brief, discuss whether they agree with the court's decision and why, and summarize the case in their own words. Then have each group reporter explain their case to the rest of the class and summarize the discussion generated in that group.

5. Explain to the class that the cases just discussed were the most recent and relevant cases dealing with the First Amendment and communication technologies available at the time the ACLU v. Reno (Handout #4) case was decided. Those cases, therefore, can serve as precedent.

6. Distribute Handout #4. Give the students time to read this handout silently and then lead a discussion with them to make sure they thoroughly understand the case and the arguments for each side. Divide the class into groups of 3-4. Have each group take on the role of the Supreme Court (who will be deciding this case this spring) and draft a short opinion deciding the appeal of this case. Will they uphold the decision of the lower court, finding the sections at issue in the Communications Decency Act unconstitutional or will they overturn the prior decision, holding that the Act complies with the Constitution? Here are some issues you may want your students to consider: Should there be any limits on the free flow of information on

the Internet? Why or why not? Whose standards should determine what can or cannot be distributed on the Net? What steps can or should be taken to protect children from certain information on the Net? Are parental control packages a good idea? Up to what age should these protections be used? What types of information should be blocked? (What about information involving: violence, profanity, sexual material, gang recruitment, racism/ethnic impropriety, satanic/other cults, drugs/drug culture, militant/extremist, illegal activities, gambling, alcohol?)

If any groups cannot come to a consensus, they should draft a majority and a dissenting opinion. After all groups have rendered decisions, identify a reporter for each group who will read the opinion to the class. After all opinions are read, open the class up for further discussion of the issues.

7. As a follow up, have your students watch for articles about Reno v. ACLU (the appeal to the Supreme Court) in magazines, newspapers, and on television in the next few months and share the information they find with the class. Also, spend a class period discussing the Supreme Court's decision in the case if it is released before the summer break.

V. KEY CONCEPTS AND VOCABULARY DEFINED

American Civil Liberties Union:	A nationwide organization dedicated to preserving and defending individual rights set forth in the Bill of Rights.
Communications Decency Act of 1996:	A federal law prohibiting the availability of indecent material to minors on computer networks.
First Amendment:	The first of ten amendments added to the U.S. Constitution in 1791 as a part of the Bill of Rights.
Precedent:	A previously decided case which is recognized as controlling authority for deciding future cases dealing with similar situations.
Preliminary Injunction:	A temporary court order requiring a party to stop doing a particular act in order to prevent threatened injury to another party.
The Internet:	A huge technological network that interconnects smaller groups of linked computer networks. There is no centralized storage location, control point or

communications channel for the Internet, and no single entity administers it.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Hold a legislative hearing with your students and have them draft their own law regulating (or not regulating) indecency on the Internet.

2. Have students draft a letter to the editor of a local newspaper expressing their views regarding the First Amendment and its relationship to the Internet.

3. Invite an attorney who specializes in cyberspace law or First Amendment issues into the classroom to provide more information on this topic.

4. Have students research: a) How does the First Amendment right to freedom of the press relate to the Internet? b) If an act like the Communications Decency Act is in existence, how can United States authorities control indecent material put onto the Internet by organizations or individuals in other countries?

5. For your benefit, we have compiled a list of useful legal resources available on the Internet:

Cyber Space Law for Non-Lawyers at http://www.counsel.com/cyberspace/
Cyberlaw at http://www.cyberlaw.
Cyberspace Law Institute at http://www.cli.org/ (This is a new site that is still under construction, but it looks promising.)
The Internet Lawyer: Internet Legal Research at http://www.internetlawyer.com/start.htm
The Legal Information Institute at http://www.law.cornell.edu/
LawLinks: The Internet Legal Resource Center at http://www.lawlinks.com/
FindLaw Internet Legal Resources at http://www.findlaw.com
From Now On, The Educational Technology Journal at http://fromnowon.org

Handout #1

HISTORY OF THE INTERNET

1960's The Internet was first conceived in the early 1960's. The concept became a reality in the late 60's as a result of a project sponsored by the Department of Defense's Advanced Research Projects Agency (ARPA). The main purpose for the Internet at that time was to link university researchers and high-tech defense contractors together at the height of the cold war. They were trying to find a way that U.S. officials could continue to communicate in the aftermath of a nuclear attack. The original ARPANET linked computers at four U.S. campuses -- Stanford Research Institute, UC Santa Barbara, UCLA, and the University of Utah.

1970's The ARPANET is a success and grows to 23 hosts, connecting university and government research centers around the U.S. E-mail quickly becomes the most popular application because it facilitates collaboration on research projects and discussion of technical information. In 1973, the ARPANET goes international with connections in England and Norway. The first commercial version of ARPANET goes on-line in 1974. The general public gets its first glimpse of how networked computers can be used in daily life.

1980's In 1981, ARPANET has 213 hosts and a new one is added approximately every 20 days. The term "Internet" is used for the first time in 1982. By 1987, the number of Internet hosts exceeds 10,000, by 1989 it exceeds 100,000, and by 1990 it is over 300,000.

1990's Up to this point in time, commercial network traffic is banned from the Internet. This restriction on commercial use is lifted in 1991. "Gopher", the first point-and-click method for navigating the Internet files, is released this same year. By 1993, more than one million hosts are part of the Internet, and traffic on the Net expands at a 341,634% annual growth rate.

Today Approximately 40 million people are connected to the Internet, the number of computer hosts is almost 10 million, and there are users in 150 countries around the world.

Sources: *Life on the Internet*, "The History of the Internet" at http://web-cr02.pbs.org/;
Popular Mechanics, "Death of the Internet", Jan. 1997

Handout #2

INTERNET FACTS

- The Internet is expected to have 200 million users by the end of this decade.
- The number of Internet users is growing at a rate of about 200%.
- At the current rate of growth, the Internet will run out of addresses in a little more than 10 years.
- In 1994, the average age of the Internet user was 26. By the year 2000, the average age will be 15.
- 50% of U.S. public schools have some access to the Internet.
- E-mail is the number one reason people access the Internet.

IMPORTANT WARNINGS FOR INTERNET USERS

- Never give out personal information on-line.
- It is strongly recommended that you not arrange to meet in person with individuals you have communicated with on the Net.

Sources: *Popular Mechanics*, "Death of the Internet", Jan. 1997; *Home PC*; *The Los Angeles Times*, "Supreme Court to Review Ban on Internet Indecency", Dec. 7, 1996; The Children's Partnership

Handout #3

THE FIRST AMENDMENT AND BACKGROUND CASES LEADING UP TO THE INTERNET INDECENCY CASE (ACLU v. RENO)

First Amendment:
Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

FCC v. Pacifica Foundation, 438 U.S. 726 (1978)
In this case, the Supreme Court first decided whether the Government had the power to regulate indecent speech. The case involved a radio listener who complained about the broadcast of George Carlin's "Filthy Words" monologue at 2:00 p.m. on a Tuesday afternoon. The listener had heard it while driving with his young son in New York. The Federal Communications Commission ("FCC") issued a declaratory order, holding that it could have subjected the Pacifica Foundation (owner of the radio station) to an administrative sanction. In its order, the FCC also described the standards that it would use in the future to regulate indecency in the broadcast medium. The Supreme Court upheld the FCC's decision and confirmed the power of that agency to regulate indecent speech.

The court made three important findings in this case. First, the Court weighed the value of indecent speech and concluded that such speech "lie[s] at the periphery of First Amendment concerns". It also found that four-letter words "offend for the same reasons that obscenity offends".

Second, the Court recognized that "broadcasting . . . has received the most limited First Amendment protection." The Government can regulate broadcast and not violate the Constitution, even though the same regulation would violate the First Amendment in the print medium. This is the rule because broadcasting has a "uniquely pervasive presence in the lives of all Americans" and "is uniquely accessible to children, even those too young to read."

Third, the Court found that the FCC's administrative sanction was an appropriate means of regulating indecent speech. The Court made it clear that it was not holding that a criminal prosecution was justified.

Bolger v. Young Drug Products Corp., 463 U.S. 60 (1983)
In this case, the Supreme Court refused to extend the holding in Pacifica to a law unrelated to broadcasting. A federal law prohibiting the unsolicited mailing of contraceptive advertisements

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was at issue. The Government defended the law by claiming an interest in protecting children from these types of advertisements.

The Court rejected this argument as overbroad. It found that receiving indecent mail, which can just be thrown away, is far less intrusive than pervasive broadcasting, which is uncontrollable and can reach young children easily. Although the Federal Government can regulate the broadcast media, it cannot necessarily regulate other forms of communication.

Sable Communications v. FCC, 492 U.S. 115 (1989)

In this case, the Supreme Court considered the validity of a law that created a ban on indecent "dial-a-porn" communications. The Government argued that if you follow the reasoning of the Pacifica case, a complete ban of that form of speech would be justified. The Supreme Court disagreed, finding instead that the holding in Pacifica was very narrow and was specifically addressing the "unique attributes of broadcasting". The Court held that the ban on "dial-a-porn" was unconstitutional because it was too broad and unnecessarily interfered with First Amendment freedoms.

The Court concluded that the law banning "dial-a-porn" "denied adults their free speech rights by allowing them to read [or listen to] only what was acceptable for children". While the Government could regulate "dial-a-porn", it could not completely ban it. Adults must have the opportunity to use that service if they so desire.

Denver Area Educational Telecommunications Consortium, Inc. v. FCC, 116 S. Ct. 2374 (1996)

In this case, sections of the Cable Television Consumer Protection and Competition Act of 1992 ("the Act") were challenged by the plaintiffs. The Act allowed cable operators to exclude programming they reasonably believed to be indecent or to put the "indecent" programs on separate channels that were blocked until a person requested access to them in writing. The plaintiffs argued that this law violated First Amendment free speech rights because it allowed censorship of "indecency" on cable TV without specific definitions or guidelines, basically allowing cable operators to decide for themselves what is indecent. A great deal of socially useful programming could then be eliminated because someone thought it was "indecent", argued plaintiffs. The Government argued that the law was justified because of its extremely important interest in protecting children from exposure to clearly offensive sexual material. It was the plaintiffs' view that children could be protected in other ways that did not completely prevent adults from reaching this material.

The Supreme Court was split in deciding this case. The Court held that two of the three sections of the Act at issue were unconstitutional. The section requiring that indecent programs on leased channels be separated out and blocked was found to violate the First Amendment because it restricted access to adult viewers. This regulation was found to be more strict than was necessary to protect children. The inconvenience required and fear that others might find out that a viewer had requested access to the "indecent" channels might keep adults from gaining access to materials they have a right to view. The section allowing cable operators to ban programs on public, educational, and government channels for indecency was also found to be unconstitutional. However, the Court held that one section allowing cable operators to screen programs on leased access channels according to their own written and published policies defining what is "patently offensive" as measured by "community standards" was constitutional. The Court found that this portion of the law was essentially reaffirming the companies' authority to pick and choose the programs they want to carry.

Handout #4

American Civil Liberties Union v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996)

Who was involved in the case –
This case was decided by a special three-judge U.S. court panel in Philadelphia. The panel consisted of the Chief Justice of the Third U.S. Circuit Court of Appeals, Dolores Sloviter, U.S. District Judge Ronald Buckwalter, and U.S. District Judge Stewart Dalzell. The plaintiffs were the ACLU and other businesses, libraries, non-commercial and not-for-profit organizations, and educational societies. The defendants were Janet Reno, the U.S. Attorney General, and the U.S. Department of Justice ("the Government").

The plaintiffs' position --
Plaintiffs were seeking a preliminary injunction to stop the Government from enforcing certain sections of the Communications Decency Act ("CDA" or "the Act"). To obtain this type of relief from the court, plaintiffs had to show that they were likely to prevail on the merits (win the case) and that they would suffer irreparable harm if the injunction was not granted. The sections of the Act being questioned by plaintiffs would prohibit Internet users from knowingly sending indecent or patently offensive material to minors or displaying such material in a manner that is accessible to them on the Internet. These actions are crimes punishable by a fine of up to $250,000, up to two years in prison, or both for each offense under the Act. Plaintiffs did not challenge the statute's restrictions on speech not protected by the First Amendment, such as obscenity, child pornography, or harassment of children.

The plaintiffs argued that the Internet represents the ultimate forum for speech and the exchange of ideas and also equally distributes this information. It was their view that by making indecency related to minors a crime, the Act would stifle the free flow of communication on the Net and infringe upon free speech rights. They claimed that the Act was overbroad and vague in defining indecency such that the placement of some valuable literary, scientific, artistic, and other works on the Internet could subject the person who put them on-line to criminal penalties. The concern was that this law would prevent people from placing that type of information on the Internet for fear of being prosecuted. The plaintiffs also argued that the CDA would deprive adult Internet users of their right to send and receive constitutionally protected speech that deals with sexual issues.

The Government's position --
The Government argued that it had an extremely important interest in protecting minors from access to indecent materials on the Internet. It took the position that the Act is not too vague because the CDA gives sufficient warning to Internet users regarding what is prohibited. The Government explained that two of the three restrictions contained in the Act do not interfere with

adult-to-adult communications because they prohibit dissemination to people known to be minors. The Government claimed that the third restriction against making material available to minors on-line was constitutional because it provided a defense to prosecution for people who took reasonable steps to prevent indecent material from reaching children.

The opinion of the court --
The court found that the speech at issue (whether indecent or patently offensive) was entitled to protection under the Constitution. The Constitution forbids the Government from silencing speakers because of their particular message. Adults have a First Amendment right to engage in indecent speech (as opposed to obscene speech which is not constitutionally protected). The Government can only regulate indecent speech for a compelling reason, and it must regulate it in the least restrictive manner.

The court found that the Act was vague in its use of the terms "indecent" and "patently offensive as measured by contemporary community standards". First, the court pointed out that standards change from community to community. What is acceptable in New York City may not be acceptable in other small, rural communities. The statute does not define which community standards should be applied. As a result, there is a possibility that the statute could be enforced differently in various parts of the country. Second, this broad ban would make illegal certain information that has value (such as National Geographic photographs) and some material that may be of critical importance to young people (such as information about AIDS).

The court also pointed out that Internet providers have no reasonable way to determine the identity and age of every user accessing their material, and they cannot control who receives their communications. Therefore, it would not be reasonable to prosecute them under such circumstances. The court found that chances were slim that children would inadvertently encounter pornography on the Internet. It further pointed out that enforcement of current obscenity and child pornography laws would address the valid concerns of the Government with respect to the protection of children, so the CDA was seen as unnecessary. The sections of the Act being questioned by the plaintiffs were found to be unconstitutional by the court.

U.S. District Judge Stewart Dalzell, a member of the three-judge panel deciding this case, said in his opinion accompanying the decision: "The Internet may fairly be regarded as a never-ending worldwide conversation. The Government may not, through the CDA, interrupt that conversation. As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion."

APPEAL TO THE SUPREME COURT

The Supreme Court of the United States has agreed to hear the Government's appeal of this case. The nine Justices are expected to hear arguments in the case, Reno v. American Civil Liberties Union, 96-511, on March 19, 1997 and to announce their decision by early July. In its brief filed recently, the Government argues that "Parents and their children have a First Amendment right to receive information and acquire knowledge . . . Much of the Internet's potential as an educational and informational resource will be wasted, however, if people are unwilling to avail themselves of its benefits because they do not want their children harmed by exposure to patently offensive sexually explicit material." The Government takes the position that it is reasonable to force those who display sexually explicit material on the Internet to try to keep it away from children. They can either not display such material or adopt methods to screen out children (such as requiring a verified credit card number for access to the site).

A decision parallel to the ACLU v. Reno case was handed down by a three-judge panel in New York shortly following this case (see Shea v. Reno). The court in Shea also struck down major portions of the Communications Decency Act. The Government appealed that decision, but the Supreme Court did not act on that appeal, apparently deciding to wait until after their decision in Reno v. ACLU.

REACTION TO THE ACLU V. RENO DECISION FROM PRESIDENT CLINTON, WHO SIGNED THE ACT FEB. 8, 1996

"I remain convinced, as I was when I signed the bill, that our Constitution allows us to help parents by enforcing this Act to prevent children from being exposed to objectionable material transmitted through computer networks." He promised "to do everything [he could] in [his] Administration to give families every available tool to protect their children".

Elementary Adaptation Guide

I. LESSON DESCRIPTION

Preface: substitute "police" for "government" whenever the age of the children would make this word more understandable.

Students will learn about the First Amendment right to free speech and how this right affects the Internet. Students will think about the question, "Is it O.K. for our government to stop people from putting naughty words and pictures on the Internet where other people can see them?" After the class has talked about this question, students will write a letter to President Clinton telling him what they think the law should be.

II. OBJECTIVES

1. To learn about the First Amendment and the right to free speech.
2. To think about whether some kinds of words and pictures should not be on the Internet.

III. KEY CONCEPTS AND VOCABULARY

First Amendment

Freedom of Speech

The Internet

IV. PREPARATION FOR LESSON

1. The children need to have a very basic understanding of what the Constitution is.
2. Gather the following materials for making simulated computers:
   - a) two, five-sided, square, cardboard boxes -- the back should be left open
   - b) paper the size of a computer screen for the children to write or color pictures on (for best results, use paper about as thick as construction paper)
   - c) crayons
   - d) glue or tape
   - e) enough string to connect the "computers" from group to group
   - f) optional: off-white paint to paint the boxes the color of a computer
3. Connect the two "computers" with the string (representing telephone wire). Attach the string to the inside of the box and run it through the other side (cutting a hole in the box to do so). Run the string out of the box through the classroom to connect up to the other

"computer" in the same fashion (running the string through a hole in this second box in order to connect it to the opposite, inside wall of the box).

V. STEPS

1. Begin the lesson by dividing the class into two groups. Give each group a name. (For simplicity, each group herein will be identified by a letter: Group A and Group B. When the lesson is done, a more descriptive name would give the lesson more impact.)

2. Give each student from Group A a piece of paper. Ask them to write a critical comment about something familiar to children on the paper. Instruct the children to write big so everyone will be able to read their sentences. Examples of sentences are:

   a) I hate school.
   b) I don't think anyone should be able to have a dog.
   c) Dogs are bad because they poop on your lawn and bark too much.

3. Instruct students in Group B to draw pictures of a scene that involves a conflict between a parent and child. For example, they could draw a picture of a child getting a spanking from his/her parent.

4. When the students are done, the teacher should take a sheet prepared by one of the students from Group A (make sure the student is anonymous) and pretend it is a message being put in and sent through the "computer":

   a) put the paper into the "computer" through the open back.
   b) roll up the paper around the string inside the box and pull the paper "through the computer" (by pulling it through the hole in the box while the paper is still rolled around the string). Then continue pulling the paper along the string to the other "computer" and then inside of it.
   c) As you do that, explain what the Internet is and how it works.
   d) After the second "computer" has "received" the message, have a student paste it to the "monitor" of the computer.
   e) Explain, "The government makes sure we can say this. Even though we may not like to hear these words, the law lets us say them. The law lets us say this to someone's face and the law lets us say this over the Internet. This law is called 'freedom of speech.' We say we have a right to the 'freedom of speech.'

5. Explain, "The right to 'freedom of speech' is written in our Constitution, in the part called the 'First Amendment'. The First Amendment also helps judges decide what kinds of pictures people can look at over the Internet. I'll give you an example".

6. Now, repeat the exercise for one of the pictures drawn. If the picture shows a father spanking a child, ask them how they would feel if this were a picture of their father spanking them and the picture was on the Internet where all of their friends could see it. Explain that most people would not like that. "Many people feel the same way about other kinds of pictures that are on the Internet. They might be naughty pictures that parents don't want their children to see. They want the government to say people can't show these pictures on the Internet. Other people disagree. Other people say parents should make sure their children don't see the naughty pictures, but the law shouldn't punish the people who put them on the Internet.

7. What do you think people should be able to say on the Internet? Should they be able to say they don't like their school? (Teacher: in the previous sentence, you may use any of the examples from section V, 2.) Should they be able to put pictures on the Internet that make some people feel bad?

8. Have your students write a letter to President Clinton telling him what your opinion is.

VI. KEY CONCEPTS AND VOCABULARY DEFINED

First Amendment:	The first change made to the U.S. Constitution and the Amendment in which the right to free speech is guaranteed.
Freedom of Speech:	The right (guaranteed by the First Amendment of the U.S. Constitution) to tell one's thoughts and views without punishment by the government.
The Internet:	Technology that makes a computer act like a telephone so that a person can talk to other people all over the world.

LESSON PLAN OF THE MONTH Series V, No. 6

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ETHICS

AN ISSUE FOR EVERY AMERICAN

We are grateful for the assistance and expertise provided to us by Millie Aulbur, Field Director for Law-Related Education, the Missouri Bar, in preparing this lesson.

ETHICS: AN ISSUE FOR EVERY AMERICAN

I. LESSON DESCRIPTION

Ethics investigations are rampant in the American political system. The Clintons, Newt Gingrich, The Democratic National Committee, The Republican National Committee, and scores of state officials are under investigation for alleged "ethics violations". Recent statistics show that ethics may be a concern in schools as well. A CNN poll showed that 65% of the high school students surveyed admitted to cheating in school. This lesson is designed to impress upon students that ethics is an essential part of everyone's life, not just a set of rules or expectations for politicians. It examines common ethical issues for students and for lawyers.

II. OBJECTIVES

1. Students will become aware of current ethics controversies.
2. Students will identify reasons that ethical standards are necessary.
3. Students will identify what problems arise when ethical standards are violated.
4. Students will become aware of common student ethical issues and attempt to resolve them.
5. Students will become familiar with a simplified version of the American Bar Association's Model Code of Professional Conduct for attorneys.
6. Students will be able to take a position on various ethical issues and defend that position.
7. Students will develop a model code of conduct for students similar to the lawyers' code of conduct.

III. KEY CONCEPTS AND VOCABULARY

American Bar Association
confidential
disbar
ethics
Model Code of Professional Conduct
plagiarism

IV. STEPS AND ACTIVITIES

Materials needed: Sufficient handouts for students and newspapers or news magazines for each student.

1. Introduce the lesson by asking students to define ethics.

2. Ask the students if they know of any federal or state elected officials that have been the subject of an "ethics" investigation.

3. Divide the class into groups of 3-4 students. Distribute newspapers and news magazines to each group. Ask the students to find articles about current alleged ethical violations by politicians, lawyers, students, doctors or other groups. Ask each group to identify the alleged ethical violation in the articles. After each group has found articles and discussed them, have each group share its findings with the entire class.

4. After the students have shared their articles, have the students list the various alleged ethical violations. Write the list on the chalkboard or on a flip chart. The students should then brainstorm about the harms that could arise because of the alleged ethical violations. List these harms on the chalk board or on a flip chart in a column next to the violations. Then have the students brainstorm about how the possible harms could be corrected and how they could be avoided in the future.

5. Explain to the students that many professions have developed a code of ethics for their members. Ask the students to brainstorm about what professions or careers they think should have a code of ethics.

6. Next explain to the students that lawyers were one of the first professional groups to develop a code of conduct. The American Bar Association created a Model Code of Professional Conduct for lawyers that many states have used to develop a code of conduct for their lawyers. If lawyers violate these codes, they may be suspended from practice for a period of time and possibly be disbarred for a lifetime.

7. Distribute Handout #1, a Simplified Model Code of Conduct for Lawyers that has been adapted from the American Bar Association's Model Code. Either have the students read the rules to themselves or read them as a class.

8. Distribute Handout #2, which describes actual ethical cases involving lawyers. Divide the class into groups of 3-4. Using Handout #1, have the students discuss the five cases and determine whether they believe there has been an ethical violation according to the Model Rules. After the students have discussed the cases as a group and had a chance to offer their opinions, tell them what happened in the real cases:

   A. No to both questions. **A lawyer cannot represent two different clients who have conflicting interests in a case.** Lawyer Smith cannot represent either Bill or Mary. He was Mrs. G's attorney and her wishes were for both Bill and Mary to inherit under the will. This is not the wish of either Bill or Mary, so their interests conflict with those of

Mrs. G and with each other. They must each hire their own lawyers.

B. No. **If a client gives a lawyer property or money to hold for the client, the lawyer may not mix that money or property with the lawyer's own money or property or use it for any purpose, except with the client's consent.** It was improper for Lawyer Jones to use John's money to buy things for himself, even if Lawyer Jones claims that the reason for the purchases was to help John by impressing prospective contacts.

C. No. **Unless a lawyer can prevent a client from committing a crime, a lawyer must keep everything the client reveals to the lawyer confidential. The lawyer must always keep the information confidential unless the client or former client agrees that the lawyer can reveal the information**. In this case, Lawyer Miller could not have prevented his client from committing a crime; the crime had already been committed. Therefore, Lawyer Miller had to keep the information about the little girl's whereabouts confidential. A lawyer can only effectively represent a client if the lawyer knows all the facts. If the lawyer could reveal the information the client disclosed, the client probably wouldn't tell the lawyer everything. Therefore, lawyers are required to keep all the information confidential in order to insure that clients can tell the whole story and receive the best defense possible. Note: This may be an opportune time to discuss how ethical conduct may not always be the most humane approach.

D. No. **If Lawyer White wants to discuss matters involving the case, she must talk to Marty through his lawyer**. However, Lawyer White can talk to Marty about matters not involving the case and remain friends with him.

E. Yes. **In a criminal case, a defendant is entitled to legal representation even if it is clear that the defendant committed the crime. A criminal lawyer can defend and require the prosecution to prove every element of its case even if there is no good faith argument in support of his or her client's innocence.** Often criminal defense lawyers are asked how they can defend a person they know is guilty. The answer is that the United States Constitution guarantees a criminal defendant a lawyer and criminal defense lawyers make sure that their clients receive due process. They ensure that the Government proves its case against the defendant beyond a reasonable doubt. In a civil case, however, a lawyer may not file a lawsuit if the lawyer knows there are no reasonable legal grounds for the suit.

9. Share the following information with students: According to a poll conducted by *The National Jurist* (Nov/Dec 1996) among the nation's law students, 54% of the students who responded said they have cheated in some way, 28% said they do not cheat but know students who do, and 18% said they do not cheat and do not know any students who do. CNN surveyed high school students recently and found that 65% of them cheated and another 24% said they did not cheat but knew students who do. The most common forms of cheating for

both groups were copying someone else's homework and plagiarism.

10. Have students brainstorm about why students cheat. (After the discussion, tell the students that the participants in *The National Jurist* survey said that most law students cheat because of the pressure to get a good job and CNN reported that most high school students cheat to perform well enough to get into a good college.)

11. Distribute Handout #3, which describes various student ethical situations that may arise in a school setting. Divide the class into 4 groups. Ask each group to prepare one of the scenarios as a role play. After each scenario is role played, ask the students to discuss the potential solutions to the problems presented, weighing the pros and cons of each.

12. As a follow up and evaluative tool, have the students prepare a model code of professional conduct for high school students everywhere. Tell the students that the model code should be developed with the student scenarios in Handout #3 in mind.

V. KEY CONCEPTS AND VOCABULARY DEFINED

American Bar Association:	the national professional organization for lawyers. The ABA provides many services for lawyers, including educational opportunities, educational materials and guides for professionalism.
confidential:	communicated in full trust that the information will be kept private.
disbar:	to take away an attorney's right to practice law by revoking his or her license as a result of illegal or unethical conduct by the attorney.
ethics:	a set of moral principles.
Model Code of Professional Conduct:	a set of guidelines establishing proper conduct for lawyers formulated by the American Bar Association as a model for states to adopt.
plagiarism:	taking the ideas or writings of another, without giving credit to that person, and representing that they are your own.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Invite a judge, attorney, or member of a state bar disciplinary committee to the classroom to discuss ethical issues that arise with judges and lawyers.

2. Invite people of various professions to speak about the codes of ethics that guide their professions.

3. Have your students write government officials and express concern over current ethical controversies.

4. Have your students create role play situations based on the ABA's Model Code or the model code written by the students.

Handout #1

SIMPLIFIED MODEL CODE OF CONDUCT FOR LAWYERS

1. A lawyer shall provide competent representation to a client. Competent means having the necessary legal knowledge and skills to handle the client's legal problem and preparing the client's case thoroughly.

2. A lawyer shall follow the client's wishes in handling the client's case. However, this does not mean that the client can ask the lawyer to lie or break any laws for the client.

3. A lawyer shall act promptly on a client's case.

4. A lawyer shall keep his client informed about the case.

5. A lawyer shall charge a reasonable fee for services.

6. A lawyer shall keep everything the client reveals to the lawyer confidential. Even if the client gets a different lawyer, the first lawyer must always keep the information confidential unless the client or former client agrees that the lawyer can reveal the information. However, the lawyer may reveal confidential information in order to keep the client from committing a crime.

7. A lawyer cannot represent two different clients in a case who have conflicting interests.

8. A lawyer cannot represent a client if the lawyer has a personal interest in the case.

9. If a client gives a lawyer property or money to hold for the client, the lawyer may not mix that money or property with the lawyer's own money or property nor can the lawyer use or invest the client's money or property, except with the express consent of the client.

10. A lawyer may not file a lawsuit if the lawyer knows there are no reasonable legal grounds for the suit. However, this rule does not apply in a criminal case where a defendant is entitled to representation as a matter of law even if it is clear that the defendant committed the crime.

11. A lawyer may not knowingly offer false evidence.

12. A lawyer must not conceal evidence from an opposing attorney.

13. A lawyer may not try to influence a judge, juror or prospective juror except in the courtroom through the process allowed by law.

14. A lawyer should not make statements to the media about evidence or the character of witnesses during a trial in which the lawyer is representing a party. General comments such as "We have a good case", "My client is innocent", or "We are ready for trial" are probably acceptable.

15. A lawyer may not be a witness in a trial if the lawyer represents one of the parties to that trial.

16. A lawyer must talk to the opposing party through the opposing party's lawyer.

17. A lawyer may advertise but may not make promises that cannot be kept or that are not true. For example, a lawyer could not guarantee that the lawyer would win a case for a client and a lawyer could not say she or he was an expert in family law if that lawyer had handled very few family law cases.

18. If a lawyer knows that another lawyer has broken the code of ethics, the lawyer must report it to the state's disciplinary office. However, if in reporting the alleged violation the lawyer might have to disclose a client's confidential information, the lawyer must first get permission from the client to disclose the information.

Handout #2

ETHICAL DILEMMAS FOR LAWYERS

The following scenarios are actual ethical cases that have arisen in various states. The names are all fictitious.

A. Lawyer Smith was Mrs. G's lawyer. Mrs G died and left everything she had to Mary and Bill, her two children. Mary and Bill hate each other and want to contest the will, each saying the other deserves nothing. Both want Lawyer Smith to represent them. Can he represent both? Can he represent one and not the other?

B. Lawyer Jones represented John who was launching an acting career. John asked Lawyer Jones to manage his money and to help him make contacts that would help his career. John's career really took off and he was making very good money. John sent Lawyer Jones the money. Lawyer Jones used some of the money to buy clothes for himself and a sports car that the lawyer thought would impress prospective contacts that he was making for John. Is this proper?

C. Lawyer Miller was appointed to represent a man who had been accused of murder. When Lawyer Miller was interviewing the client, the client admitted that he had killed three other people. One of the victims was a little girl who had been reported as missing for some time and whose parents were pleading for any information about their little girl. The client told Lawyer Miller where the little girl's body could be found. Lawyer Miller went to where the client told him he would find the body. He found the body there and knew from a description the parents gave of the child's clothing that it was the missing child. Lawyer Miller did not tell anyone. At trial, Lawyer Miller used the defense of insanity for his client and obtained his client's permission to reveal the other murders to help prove the client's insanity. When the media reported that the lawyer knew about the little girl's murder and knew where the body had been placed, the public was outraged that Lawyer Miller did not tell anyone. Should Lawyer Miller have revealed the information about the little girl?

D. Lawyer White is at a party. She sees a friend, Marty, who is getting a divorce. Lawyer White represents Marty's spouse, also a friend, in the divorce proceeding. Lawyer White and Marty speak to each other and agree that the divorce will not interfere with their relationship. Lawyer White then asks Marty what it will take to get him to agree to some of the terms Lawyer White's client wants. Is this proper?

E. Lawyer Johnson's client is accused of stealing. The client admits to Lawyer Johnson that he committed the crime, but he wants to plead not guilty. Can Lawyer Johnson enter a plea of not guilty for his client when he knows it is not true?

Handout #3

WHAT WOULD YOU DO?

The following are situations that may arise at school. What would you do in the situation? What do you think the ethical solution would be? Is the ethical solution always the most humane solution?

1. It is the day of the district championship game for the boys' basketball team. If the team can win the district championship, there is an excellent chance that the team will go on to the state finals. Your chemistry class has a substitute teacher whom you convince to let you go to the office to get something. Instead, you sneak down to the boys' locker room to meet a friend and goof-off. You and your friend have made a hobby of "getting one over" on substitute teachers. Your friend doesn't show up and you are about to leave when Bruno, the star basketball player with a scholarship to play Division 1 college basketball, comes into the locker room with a friend. He does not see you and you slip behind a locker because the two of you are not friends. In fact, you cannot stand him. He gets a lot of attention from other students, teachers and fans because he is the #1 reason the basketball team is doing so well. Moreover, he is positively rude to all but the most elite of the student body and can be a real bully. He is particularly unhappy with you because he saw you flirting with his girl friend. You cannot believe it when you hear Bruno and his friend talking about getting high on cocaine and then you see them each snort some cocaine right there in the locker room. Bruno tells his friend that he will need a little more before the big game. The school has a strict policy against drug use and Bruno will be suspended from school and basketball if he is discovered taking drugs. You are also smart enough to know that it is very dangerous for Bruno to be playing basketball under the influence of drugs. Part of you would really like to burst Bruno's huge ego bubble by reporting him, but another part of you is genuinely concerned about Bruno playing basketball while under the influence of cocaine. On the other hand, if you report him, you will have to explain why you were in the locker room. You could be in trouble for skipping class and your grade may be lowered. You need that grade in chemistry to get a scholarship. You also have tons of school spirit and you want the team to win the championship. You know that if you report it, Bruno will be off the team because the principal is absolute on this matter. What do you do?

2. You are assigned a research paper for Senior English. Mary, a classmate, is in the library at the same time that you are doing research and is also doing research for her paper. You and Mary are both straight "A" students and are tied for valedictorian. If both of you hang onto the #1 spot, you will both win a lot of scholarships. While the two of you are not friends, you respect each other. The research paper is 90% of the grade in Senior English. You notice that Mary is on the Internet. You see her copy some information from the Internet and put it verbatim (word-for-word) into her report. She does not credit the source and represents it in her paper as her own original writing. Do you turn Mary in? What if you know that Mary

wouldn't have time to do research and rewrite her paper because her Mom is dying of cancer and Mary is visiting her mother in the hospital daily and helping her family? What if Mary comes from a large family with modest means and her only chance of financing college is through substantial scholarship funds? What if you are worried that you may be getting a "B" in math and it would help you to hang onto the #1 spot if Mary does not get an "A" in English?

3. You have done all of your homework. Your best friend fell asleep doing homework last night and woke up too late this morning to do it. Your friend tells you he really needs the homework and asks to copy yours. Will you let him?

4. It is final exam time. Mr. Jones, the psychology teacher, is the worst teacher you have ever had. He is a poor lecturer and gives tests on topics he has never covered in class. Just as he hands out the final, he is called out of the room. When one student gets up to sharpen her pencil, she notices the final exam with the answers is laying on Mr. Jones' desk. She copies the answers very quickly and is passing them around the room. You are one of the people who copies the answers. When Mr. Jones comes back into the classroom, he catches one of the students copying the answers. The student is given an "F" and sent to the office. What will you do when Mr. Jones asks if anyone else has cheated?

5. You are student council president. One of your duties is to count votes for homecoming queen. Mary Jane wins by one vote over Ellen. You, the vice-president, and the secretary are disappointed because Ellen is so much nicer than Mary Jane and Ellen's brother was killed in a car wreck during the summer. All three of you feel that Ellen deserves it more and needs a boost in her life. The three of you could easily announce Ellen as the winner and no one would ever know the difference. What would you do?

6. Mr. Smith is the school custodian. He is very nice but a little slow mentally due to a brain injury he suffered in an auto accident some years ago. Mr. Smith is responsible for keeping the soda machine filled and collecting the money from it. Jane and James, two of your friends, have figured out a way to get cans of soda from the machine without paying for them. You hear that Mr. Smith is being accused of stealing soda money because the money collected does not equal the number of cans being taken from the machine. He may lose his job. What do you do?

ELEMENTARY ADAPTATION

I. LESSON DESCRIPTION

Students will be asked to think critically about student ethics and ethics for various professions.

II. OBJECTIVES

1. Students will learn what "ethics" means.
2. Students will learn what role ethics plays in their everyday lives.
3. Students will learn what role ethics plays in their classroom.
4. Students will develop a code of ethics for their classroom.

III. KEY CONCEPTS AND VOCABULARY

cheating ethics plagiarism profession

IV. STEPS

1. Ask students to look up the definition of ethics.
2. Have the students list various careers and professions. Ask the students what professions might have a code of ethics to follow. Give the students Handout #1 from the middle and high school lesson. Discuss as a class why they think it is important for lawyers to have such a code. Explain that disobeying this code will lead to serious consequences, including being thrown out of the law profession.
3. Divide the class into groups of 3-4 students each. Have each group select one of the careers listed in Step #3 of the middle and high school lesson. Have the group develop a code of conduct for that career or profession. After each group has completed its code, each should share its code. Discuss why a code of "proper conduct" is good for various professions.
4. Inform the students that many people are concerned about classroom ethics. Discuss what "cheating" means and the forms it can take, i.e., copying someone's homework, looking on someone else's test, or stealing someone else's assignment. Have the students look up the word "plagiarism" and discuss its meaning. Discuss why it really is cheating to do a report for class by directly copying information from a book, encyclopedia, or the Internet.
5. Divide the class into groups of 3-4. Have each group create a model code of conduct for the

classroom. Each group should share its code. As a follow-up, the students could develop a master code of conduct for the classroom by combining all of the groups' codes into one.

V. KEY CONCEPTS AND VOCABULARY DEFINED

cheating:	to act dishonestly.
ethics:	a set of moral principles.
plagiarism:	taking the ideas or writings of another, without giving credit to that person, and representing that they are your own.
profession:	an occupation requiring considerable study and specialized training.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Develop a model code for the entire school, including teachers and administrators.
2. Have a lawyer or judge visit the classroom and discuss ethical issues that arise within the legal profession.

LESSON PLAN OF THE MONTH Series V, No. 7

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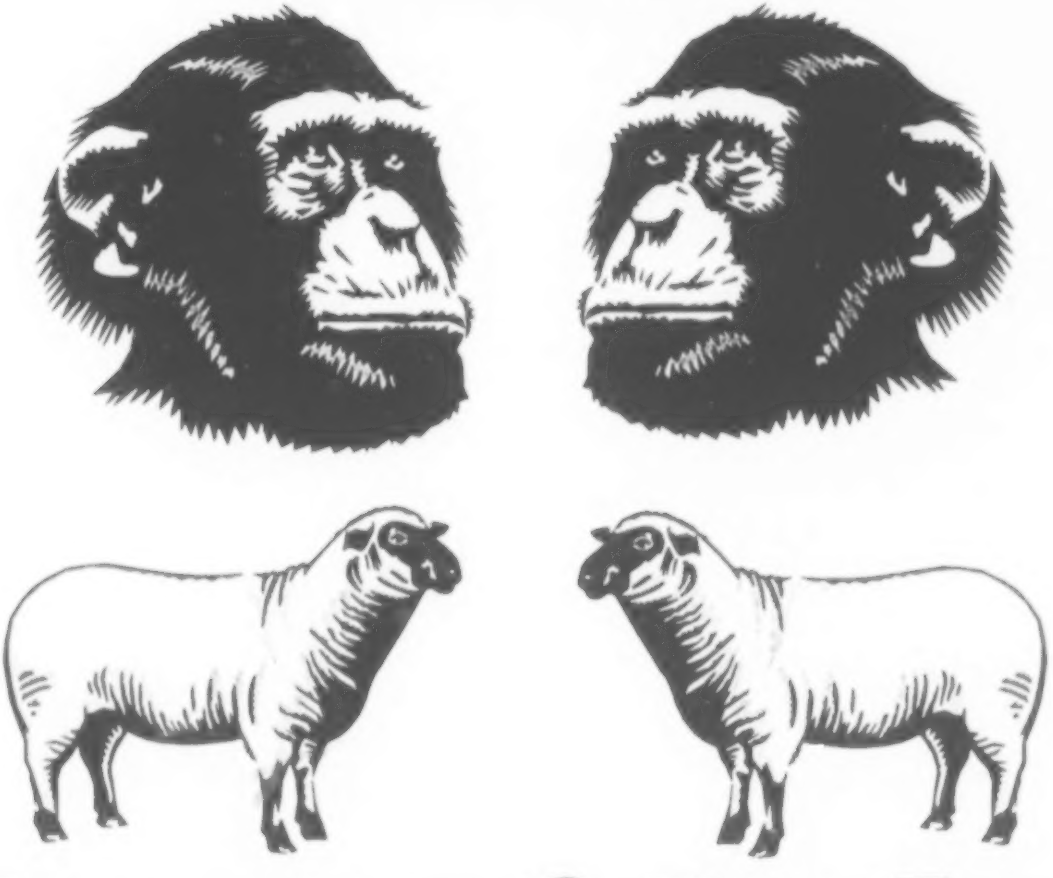
Cloning....



Are we next? How Far should it go?

We are grateful for the assistance and expertise provided to us by Millie Aulbur, Field Director for Law-Related Education, the Missouri Bar, in preparing this lesson.

CLONING . . . . ARE WE NEXT?
HOW FAR SHOULD IT GO?

I. LESSON DESCRIPTION AND BACKGROUND INFORMATION

For many years, most people have assumed that cloning was merely an imaginative science fiction theme for movies like "The Boys from Brazil" or "Multiplicity" and that actual cloning of human beings would never become a reality. Even in 1942, when scientists Robert Briggs and Thomas King cloned frogs from tadpole cells, the cloning of human beings seemed an extremely remote and unlikely possibility. Twenty years later in 1962, John Gurdon advanced the process by cloning frogs from older tadpoles. Still, people generally held the view that cloning a frog was far removed from cloning a mammal, much less a human being. Legal and religious scholars who suggested that the possibility of cloning human beings deserved serious attention were dismissed as alarmists. Thus, in March of 1997, when Dr. Ian Wilmut of the Roslin Institute in Scotland announced that he and his colleagues had successfully cloned a sheep named Dolly, the world was unprepared for the news and a mild panic ensued. This panic intensified when scientists in the state of Washington announced that they had successfully cloned a monkey. Suddenly, the possibility of cloning a human being seemed a very real possibility. People became alarmed because no laws or ethical guidelines have been established to address such a possibility.

President Clinton, concerned with "serious ethical implications" in regard to cloning human beings, assembled a group of bioethicists to decide in 90 days whether the United States government should regulate cloning. A bill has been introduced in the Senate by Senator Christopher Bond (R-MO) to prohibit federal tax money from being spent on any scientific research involving human cloning. Similar bills have been introduced in many states. All major religions -- Buddhism, Catholicism, Islam, Judaism -- have publicly announced opposition to human cloning.

This lesson plan introduces students to the various legal and ethical issues that are being raised regarding human cloning and requires students to think critically about how laws might address these issues.

II. OBJECTIVES

1. Students will become aware of legal and ethical controversies concerning the possibility of human cloning.
2. Students will learn about other times in history when society became alarmed about scientific discoveries and how government played a part in elevating or allaying these fears.

3. Students will debate the various legal and ethical issues surrounding human cloning.

4. Students will propose bills that address the cloning issue and act as a mock legislative body to either accept or reject the bills as law.

III. KEY CONCEPTS AND VOCABULARY

bioethicist
cloning

ethics
evolution

genetic engineering
heresy

in vitro fertilization
morals

IV. STEPS AND ACTIVITIES

Materials needed: Sufficient handouts for students and newspapers or news magazines for each student

1. Introduce the lesson by asking students to define cloning. Provide students with the information in the introductory paragraphs of this lesson plan.

2. Divide the class into groups of 3-4 students. Using the school library, ask the students to locate recent stories on the reaction to the announcement that a sheep had been successfully cloned in newspapers, magazines and on the Internet. Ask the students to share the information they find with the class.

3. Cloning is not the first scientific discovery that has alarmed Americans and raised the question of why there were no laws to regulate research, experimentation and use of the scientific discovery. Cloning is also not the first scientific experimentation or theory that has caused moral and ethical battles that legislatures and\or courts have been asked to address. Divide the class into groups of 3-4 students. Have them research historical situations where government and science have clashed or cooperated and trace the status of those situations to present times. Some of these historic clashes and the present status are summarized below. You may want to provide the students with these topics or add them to their findings. Have the students share their findings with the whole class.

    a. In 1925, John T. Scopes, a young high school teacher in the small town of Dayton, Tennessee was teaching evolution in his biology class. Scopes was accused of violating the Butler Act, a state law that made it unlawful for any teacher to teach any theory that denied the story of the creation of man as portrayed in the Bible and taught instead that man had descended from a lower order of animals. The Butler Act was named for the fundamentalist Tennessee legislator, Washington Butler, who was reacting to Charles Darwin's theory of evolution, which was that human beings had evolved from monkeys or apes. John Scopes was charged with violating the Butler Act and was brought to trial. Both the prosecutor and defense counsel were famous lawyers who became even more famous at the Scopes trial, or the Monkey Trial, as it became known. The prosecutor was William Jennings Bryan, who was vehemently opposed to any theory of man's creation other than that found in Genesis in the Bible. Clarence Darrow was the defense attorney, who argued that evolution was not contradictory to the Bible's account of creation. Scopes was found guilty and was fined only $100.00. The case was actually considered a victory for pro-evolutionists, however, because Darrow exposed the unreasonableness of the Tennessee law.

Since 1925, opposition to teaching evolution in the schools has lessened considerably and now evolution is presented in most science texts. As scientists have made further discoveries that support the theory of evolution, anti-evolutionists have been narrowed to only the most fundamental religious groups. For example, the Catholic Church, a traditionally conservative institution, at one time held that the theory of evolution constituted heresy because it contradicted the Bible. In the 1970s, the Church announced that the theory of evolution was not in direct contradiction to the teaching that God had created man. Then in the 1980s when Arkansas was debating a bill that would have made it mandatory for teachers to teach the Biblical version of creation alongside the theory of evolution, a Catholic bishop testified against the bill on the grounds that the Biblical story of Creation was never meant to be a scientifically accepted theory. Just recently, Pope John Paul II announced that scientific studies make it clear that evolution is more than a "mere hypothesis."

b. When World War II broke out, rumors abounded about Hitler's Germany having some kind of super new weapon. Only in the most elite scientific circles was it known that the Germans were working on atomic weapons. The United States government responded by funding the Manhattan Project, a secret, accelerated program to beat the Germans in developing an atomic bomb. When the first atomic bombs were dropped at Nagasaki and Hiroshima in Japan by the United States during the waning days of World War II, Americans' initial reaction was, for the most part, very favorable. There was a kind of patriotic pride that the United States was the first to develop and use such a weapon. However, when the aftermath of the atomic explosion was revealed and more scientific data about the effects of atomic blasts was made available, pride changed to fear. As the Cold War with the Soviet Union escalated, people all over the world feared a nuclear holocaust. Americans built bomb shelters and school children had bomb drills, much like today's fire drills. Most people wished history could reverse itself and the discovery of atomic power could be buried forever. The United States government that had pushed so hard for the development of the bomb was now being criticized for unsafe atomic testing conditions, mishandling of atomic waste, and proliferation of atomic weapons. "Atomic" anything had a very bad connotation at that time.

In the 1970s, however, scientists demonstrated that the research that led to the development of the atomic bomb had led to other discoveries about how radiation could be used to treat cancer and how the splitting of the atom could be a feasible energy alternative to the dwindling supply of fossil fuels.

Today, people are still very concerned about the negative side effects of the radiation produced by atomic explosions and unscrupulous nations developing atomic weapons. However, there is not much opposition to government-funded projects to further develop atomic energy and atomic medical treatments.

c. In 1978, the birth of Baby Louise, the first child conceived through in vitro fertilization, created quite a stir around the world. Critics argued that this process was unnatural and opened the door to genetic manipulation. Proponents argued that in vitro fertilization was a viable alternative for childless couples experiencing conception problems. At the time of Baby Louise's birth, the Untied States did not have any laws regulating in vitro fertilization and while some states have passed laws, there still are no federal laws. However, as more and more infertility clinics have begun offering in-vitro fertilization, problems have emerged and raised issues that may require lawmaking bodies to promulgate some regulations. The court system has become involved because lawsuits have been filed regarding various fertility issues. For example, some couples have accused infertility clinics of mixing up the fertilized eggs and implanting the mother with the wrong embryo. Other couples have accused clinics of putting the wrong sperm with the wrong eggs. Other related cases have been about who owns the frozen fertilized eggs if a couple divorces or who owns frozen sperm when the donor dies.

4. Have students discuss the similarities and differences between the current reaction to cloning and the initial public response to the historic events discussed in #3. Brainstorm about what the reaction to cloning will be in 20 years.

5. Have the students assume that they are the panel assembled by President Clinton to make recommendations about whether the federal government should regulate cloning and if it should, then decide what regulations are needed. Arrange the classroom into a conference room. At the end of this lesson plan, you will find nine role play cards. Cut the cards apart and assign one role play each to nine different students. Those students playing the various roles should sit around the conference table to debate the issues. The other students in the class should sit in an outer circle around the table. Students in the outer circle will be partners with the role players and help the role players develop their arguments. You may want to have your students create additional role players so that more people can be directly involved in debating the issues.

6. After all sides have had a chance to contribute to the debate, divide the class into groups of 3 or 4 students each. Each group is to draft one or two bills proposing laws to address the cloning issues raised in the debate. After each group has devised its bills and appointed a spokesperson, arrange the classroom into a legislative body. The spokesperson should then present the proposed bills for discussion. After discussion, a vote should be taken. Students may want to send the bills passed by the class to a legislator.

V. KEY CONCEPTS AND VOCABULARY DEFINED

bioethicist:	a person who studies the ethical and moral implications of discoveries and advances, as in the field of genetic engineering.
clone:	a group of genetically identical cells descended from a single common ancestor by means of asexual reproduction.
ethics:	a set of moral principles.
evolution:	a gradual process in which something changes into a different and usually more complex form.
genetic engineering:	scientific alteration of the structure of genetic material in a living organism.
heresy:	an opinion or doctrine at variance with established religious beliefs.
in vitro fertilization:	the uniting of the egg and sperm outside the parents' bodies in a laboratory setting. The fertilized egg is then implanted in the mother.
morals:	standards of right and wrong.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Have students read Brave New World by Aldous Huxley and report on it in class. When this book was published in the 1960s, most people thought Huxley's predictions were purely science fiction. Compare and contrast the fiction of the story with the advancements made in cloning today.

2. Invite a lawmaker to speak in the classroom about potential cloning legislation.

3. Have your students brainstorm about what other scientific discoveries may be on the horizon and about whether government should be preparing for them now. For example, have the students pretend that intelligent life is found in another galaxy and that they are part of an inter-galactic panel that must recommend laws and guidelines for cooperation between the galaxies.

Role Play #1

BIOETHICIST #1

You have the following concerns about the cloning of human beings:

1. **Scientists will clone human beings to serve as replacement parts for other human beings. For example, a human will be grown to provide a heart or liver for another human being.**
2. **People with criminal tendencies or persistent mental problems will choose to clone themselves and perpetuate an unhealthy gene pool.**
3. **Who will assume parental responsibility of a human clone, the person who was cloned or the parents of the person who was cloned?**

Role Play #2

BIOETHICIST #2

You have the following concerns about the cloning of human beings:

1. **You know that before scientists successfully cloned the sheep Dolly, they first had over 200 mutants. You are worried that cloning could create monsters.**
2. **You are afraid human cloning will encourage genetic engineering and could tempt unscrupulous people to attempt to develop a so-called "master race."**

Role Play #3

RELIGIOUS LEADER #1

1. **You believe separating reproduction from human relationships may lead people to believe there is no need for marriage.**
2. **You believe experimentation that could result in human mutants is immoral**
3. **You believe it is morally repugnant for someone to love himself so much that he wants another person just like himself.**

Role Play # 4

DISEASED PERSON

You have a very rare form of leukemia. You are the single parent of two young children.Your only hope for survival is a bone marrow transplant. A worldwide search has failed to find a match for you. Your last option is to harvest bone marrow from a clone of yourself.

Role Play #5

RELIGIOUS LEADER #2

1. **You think that people will believe they can make themselves and their loved ones immortal through cloning and that people will lose sight of the fact that dying is a part of life's cycle and part of God's plan.**
2. **You believe that cloning ignores the fact that every human being is unique in God's eyes and that cloning alone will not exactly reproduce a person.**
3. **You wonder who a child will consider his parents in the event he was reproduced through cloning.**

Role Play #6

SCIENTIST

1. **You believe cloning experimentation will lead to cures for diseases like cancer, diabetes and cystic fibrosis.**
2. **You believe cloning will lead to better animals and plants for food and other products.**

Role Play #7

LAWMAKER #1

1. **You believe that government should regulate and oversee human cloning because if government does not become involved, human cloning will be done in secretive labs where horrible things may occur.**

2. **You believe anything that could be harmful to humans or animals must be overseen by the government.**

Role Play #8

LAWMAKER #2

1. **You believe that government should stay out of the human cloning issue because decisions about reproduction are up to each individual.**

2. **You believe the government should not provide funds for human cloning studies, but you do believe the government should allow free enterprise to control the market for human clones.**

Role Play #9

CHILDLESS MAN

You are the last male in your family line. A childhood disease has made you sterile and your only hope for a descendant is a clone of yourself.

ELEMENTARY ADAPTATION

I. LESSON DESCRIPTION

Students will be asked to think critically about what cloning of human beings could mean in the future.

II. OBJECTIVES

1. Students will learn the definition of a clone.

2. Students will become aware of the various arguments for and against the cloning of human beings.

3. Students will make rules about cloning of human beings.

III. KEY CONCEPTS AND VOCABULARY

clone

ethics

morals

IV. STEPS

1. As a class, define a clone. Using the information in the opening paragraphs of the main lesson, discuss historic and recent developments in cloning with the students. Explain that President Clinton has convened a panel to discuss human cloning.

2. Divide the class into groups of 3-4 students. Give each group a role playing card from the main lesson. (You may need to define or simplify some of the terms.) Each group should pick a spokesperson who will argue the position on the role playing card. The whole group should help develop the argument. Each group will then present its argument.

V. KEY CONCEPTS AND VOCABULARY DEFINED

clone:	an exact copy of an individual made by science.
ethics:	a set of moral principles
morals:	standards of right and wrong.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Have students make a classroom scrapbook with articles about cloning.
2. Invite a lawmaker to speak to the class about potential laws concerning cloning.

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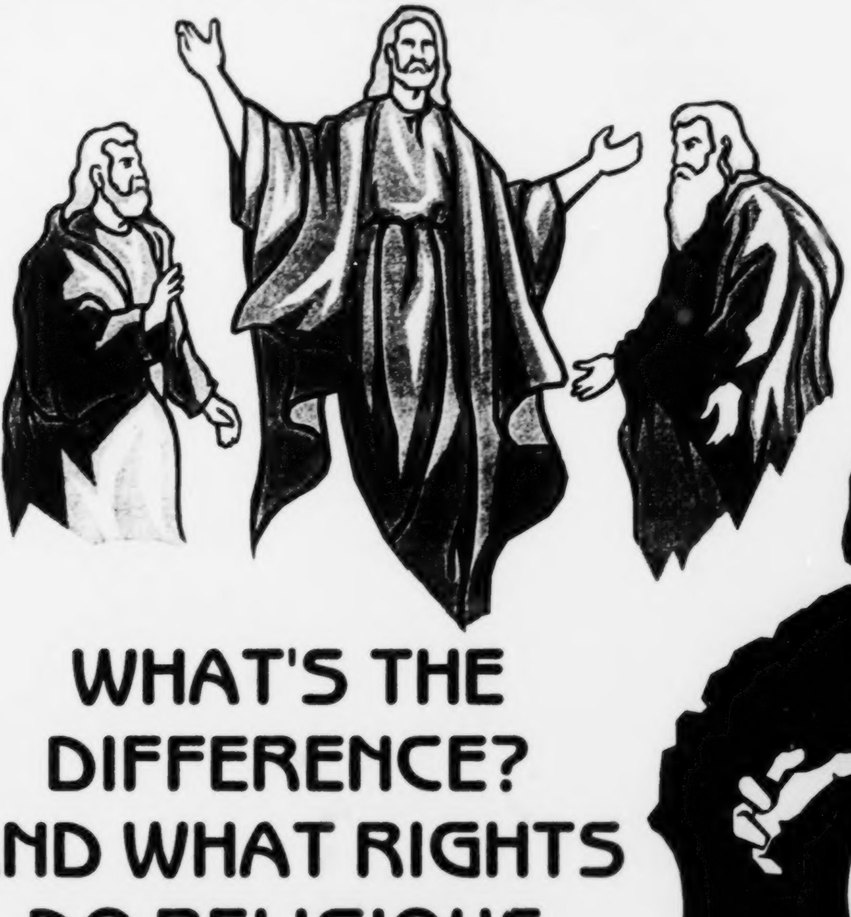
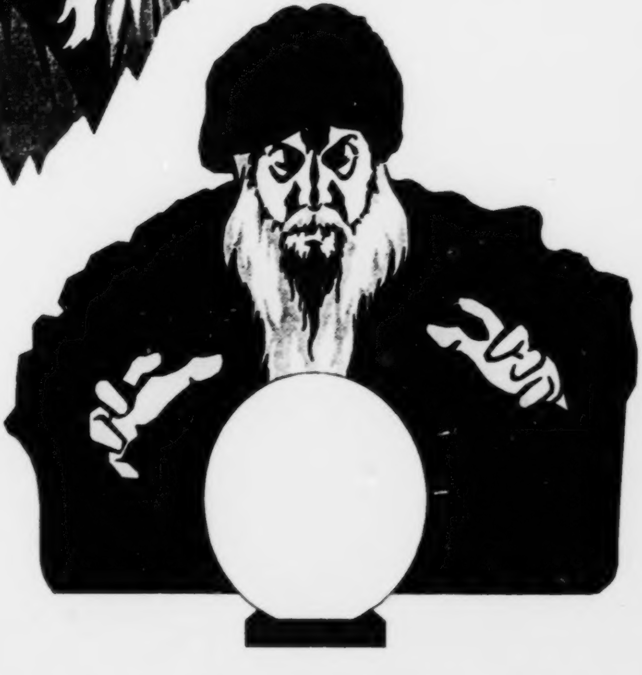
A RELIGION?



OR A CULT?



WHAT'S THE DIFFERENCE? AND WHAT RIGHTS DO RELIGIOUS CULTS HAVE?

We are grateful for the assistance and expertise provided to us by Roger L. Goldman, Professor of Law and Associate Dean for Academic Affairs, St. Louis University School of Law, and Linda Riekes, Unit Director of Law and Citizenship, Division of State and Federal Programs, St. Louis Public Schools, in preparing the main portion and elementary adaptation of this lesson respectively.

RELIGIOUS CULTS AND THE CONSTITUTION

I. LESSON DESCRIPTION

This lesson explores various issues concerning religious freedom as it relates to religious groups and cults. This lesson examines the rights of minors to join cults over their parents' objections, the right of such groups to engage in practices the state wants to ban, the determination of what is a religion, and the powers of Congress and the Supreme Court to protect religious freedom.

II. OBJECTIVES

1. Students will become familiar with the Free Exercise, Establishment and Free Speech clauses of the First Amendment.

2. Students will learn the current law regarding issues pertaining to religious cults.

3. Students will be able to analyze the limits on government in cases dealing with religious freedom.

III. KEY CONCEPTS AND VOCABULARY

Bill of Rights
Establishment Clause
Fourteenth Amendment
Free Exercise Clause
Free Speech Clause

IV. STEPS AND ACTIVITIES

Materials needed: Sufficient handouts for all students.

1. Do a short introduction to the religious freedoms provided for in the First Amendment. Distribute Handout #1 to the students, which is the text of the First Amendment. Ask them to underline the words that provide for freedom of religion and speech: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." Discuss with students the meaning of the Establishment Clause, the Free Exercise Clause and the Free Speech Clause. See **KEY CONCEPTS AND VOCABULARY DEFINED**.

2. Ask the students if they see anything in the First Amendment that would prohibit the government from interfering with the religious practices of a cult. Draw the students' attention to the words, "Congress shall make no law . . . ." Explain to the students that the due process clause of The Fourteenth Amendment extends this rule beyond Congress (the federal government) to the state and local governments as well. They also cannot pass laws that establish religion or interfere with the free exercise of it.

3. Brainstorm with the students about periods in world and U.S. history where governments have favored the establishment of religion and interfered in the free exercise thereof (i.e., the Spanish Inquisition, King Henry VIII and the Church of England). Discuss how this history may have influenced those who wrote the First Amendment.

4. Distribute Handout #2. Have the students read this handout and explain that the material comes from decisions of the U.S. Supreme Court.

5. Distribute Handout #3. Have the students read this handout and brainstorm about what qualities would make a certain group a cult and another a legitimate religion.

6. Distribute Handout #4. Divide the class into groups of 4 or 5 students each. Ask the students to evaluate each situation described in the Handout and decide whether the activity violates the First Amendment. The students should use the other handouts as guidelines for evaluation. After the groups have had time to discuss Handout #4, the class as a whole should discuss the conclusions reached by each group. The answers to Handout #4 are provided below and are based on current law.

   A. In general, state law makes parents responsible for the care of their minor children, and even when the child claims his religious beliefs should take precedence over the obligations of his parents, his Free Exercise claim under the First Amendment to stay with the group would not prevail over his parents' rights. If he were no longer a minor, his claim would prevail, unless it could be shown that he was incompetent to make decisions for himself and his parents were granted guardianship status over him.

   B. Under the Smith case, state laws of general applicability would be constitutional and would override the claim of the religious group that they were freely exercising their religion. However, this law permits some types of animal slaughter but not animal sacrifice for religious purposes. Therefore, under a case decided by the Supreme Court with similar facts, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah (1993), the law is unconstitutional because it discriminates against religion.

   C. This case raises the question of what constitutes a religion for protection under the Free Exercise Clause. In a series of cases involving the military draft in the 1960's, the Supreme Court gave a broad definition of what qualified as a religion. The military draft laws exempted from combat people who were conscientiously opposed to war based on their "religious training and belief", defined in the law as a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" but not including "essentially political, sociological, or philosophical views or a merely personal moral code". In one case involving the folk singer, Pete Seeger, the Court interpreted that phrase to mean that a person was exempt if his belief "occupies a place in his life that is parallel to that filled by the orthodox belief in God or one who clearly qualifies for the exemption." Among other things, courts would want to ensure that the beliefs are not merely personal preferences but are truly religious convictions.

D. This case raises an issue of freedom of speech. Except in rare circumstances, the government cannot stop books from being published or distributed, that is, the First Amendment prohibits prior restraints. Courts are more willing to consider it if there is a clear and present danger that the words will cause immediate violations of law. If the government could show that the book would lead to mass suicides, that might satisfy the stringent test for stopping publication and distribution. However, in this situation the words seem ambiguous and the members might already know about the leader's philosophy, so stopping the books' distribution might not accomplish the goal of preventing the suicides.

E. In the famous case of Marbury v. Madison, Chief Justice John Marshall said that it is the duty of the judicial branch to determine the constitutionality of laws. Since the Supreme Court in Smith has interpreted the Free Exercise Clause in a way differently from that of Congress in RFRA, Congress is arguably trespassing on the Court's power to determine the meaning of the Constitution. On the other hand, Congress does have a role in enforcing the provisions of the Fourteenth Amendment and RFRA is arguably an example of Congress enforcing the Free Exercise rights of individuals. RFRA gives more protection to religion than did Smith, and in the 1960s, the Supreme Court upheld congressional laws that expanded the civil rights of persons beyond the protection afforded by Supreme Court decisions.

V. KEY CONCEPTS AND VOCABULARY DEFINED

Bill of Rights:	the first ten amendments to the United States Constitution, ratified in 1791.
Establishment Clause:	the portion of the First Amendment that prohibits government from establishing or favoring the establishment of a particular religion or of religion in general.
Fourteenth Amendment:	the Amendment that has been interpreted to apply most of the provisions of the Bill of Rights to the states and local governments.
Free Exercise Clause:	the portion of the First Amendment that guarantees individuals the right to practice their religion without interference by the government.
Free Speech Clause:	the portion of the First Amendment that grants individuals the right to express their opinions without fear of government interference.

VI. ADDITIONAL ACTIVITIES FOR EXTENSION AND ENRICHMENT

1. Have the students brainstorm about rights that are often taken away from cult members by their leaders. For example, the freedom to send their children to any school they want, to speak their mind and dissent from the group, to talk to whoever they want, to wear whatever clothes they choose. Ask the students whether they believe any of these restrictions on freedoms are unconstitutional. If they find some to be unconstitutional, explain to them that action by private individuals (cult leaders) cannot be prohibited by the Constitution. Generally, the limits in the Constitution are only applicable to action by the government.

2. Have the students research how other countries handle the issue of the rights of minority religions in their countries.

Handout # 1

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Handout # 2

HISTORY OF THE RELIGION CLAUSES AND SUPREME COURT CASES

A. History

1. The religion clauses of the First Amendment stop Congress from making laws that establish a national religion or prohibit the free exercise of it. According to Supreme Court Justice Robert Jackson, the effect of these clauses was to make sure that religion would not be supported at taxpayers' expense. Religious freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the government's hands off of religion, but to keep religion's hands off the government.

2. The two Religion Clauses were included in the Bill of Rights because of the belief that individual religious liberty could be achieved best under a government that was stripped of all power to tax, to support, or otherwise to assist any religions, or to interfere with the beliefs of any religious individual or group. James Madison, the father of the Bill of Rights, argued that a true religion did not need the support of law; that no person, either believer or non-believer, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free; and that cruel persecutions were the inevitable result of government-established religions. Although the Establishment Clause initially was written to restrict the federal government, the Supreme Court has held that this Clause also applies to the states through the due process clause of the Fourteenth Amendment.

3. Historically, many people left Europe for America because their governments required them to support state religions, both monetarily and by imposing obligations to worship. In America, prior to the adoption of the Bill of Rights, some of the early proponents of separation of church and state, like Roger Williams of Rhode Island, stressed it was important to protect churches from government. Others, like Thomas Jefferson, stressed that separateness was good for the state, while still others, like James Madison, believed it was good for both. The Free Exercise Clause was a response to governmentally coerced worship; it was a guarantee that individuals would have the right to choose freely their own religion. The Establishment Clause was to ensure that government could not support a church, for example, by taxing people to pay for the salaries of ministers or to buy church property. The belief was that churches should be supported entirely by voluntary contributions from their members. Government was to remain neutral toward religion, neither helping nor harming it.

B. Establishment Clause Cases

In the 1947 case of Everson v. Board of Education, the Supreme Court stated that the "establishment of religion" clause means at least this: Neither a state nor the Federal Government can set up a church...Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbelief's, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever from they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State".

C. Free Exercise Clause Supreme Court Cases

Wisconsin v. Yoder (1972): Defendants, residents of Wisconsin, were members of the Amish religion. Wisconsin's compulsory school-attendance law required them to send their children to public or private school through age 16, but they refused to send their two children, ages 14 and 15, to public school after they completed the eighth grade. They were charged, went to trial, and were convicted of violating the compulsory-attendance law in Green County Court and were fined the sum of $5 each. The defendants claimed this violated their rights under the Free Exercise Clause of the First Amendment because they believed that sending their children to school, public or private, was contrary to the Amish religion and way of life. They believed that their children should be educated in the home. They felt that by sending their children to high school, they would not only expose themselves to criticism by the Amish church community, but also would endanger their own salvation, that of their children, and might ultimately cause the destruction of the church. The State agreed that their religious beliefs were sincere. The Court upheld the free exercise claim of the Amish and agreed with them that they did not have to comply with the state's compulsory-attendance law. The Court concluded that Wisconsin's law forced them, under threat of criminal sanction, to perform acts that were against their religious beliefs and the First Amendment protected them from that. The Court stressed the uniqueness of this case because it involved the Amish, a religious sect established for three centuries as a self-sufficient segment of American society. Very few other religious sects would be able to prevail in this type of case.

Employment Division, Department of Human Resources of Oregon v. Smith (1990): The two plaintiffs were fired from their jobs because they ingested peyote for sacramental purposes at a ceremony of the Native American Church, of which both are members. When they applied to the defendant for unemployment compensation, they were determined to be ineligible for benefits because they had been discharged for work-related misconduct (possession of peyote is a crime in Oregon and there is no exception for the sacramental use of the drug). The question before the Supreme Court was whether the Free Exercise Clause permitted a state to include religiously-inspired peyote use within the reach of its general criminal prohibition on use of that drug. The Court found that the Free Exercise Clause does permit this. The general rule was that an individual had to comply with any law that incidentally forbade an act that his or her religion required if the law was not specifically directed to the religious act and was otherwise constitutional.

In 1993, Congress enacted the Religious Freedom Restoration Act (RFRA) which overturned the majority's approach in Smith and adopted the view of the dissenting opinion. The Act requires that all levels of government must give religious practices special consideration when laws of general applicability place a burden on religion. A law can survive only if the state's interest is compelling and the law has the least restrictive effect on the religious practices.

Sherbert v. Verner (1963): A woman was fired from her job because she would not work on Saturday, The Sabbath Day of her faith. She tried to find other employment but could not because she was not able to work on Saturdays. The woman filed for unemployment compensation benefits under a law which provided in part that a claimant could not get benefits if she had failed, without good cause, to accept suitable work offered to her. The state denied her unemployment benefits under this clause because she refused suitable work that was offered to her. They did not consider her religious duty not to work on Saturday "good cause".

The Supreme Court found that the state had imposed an unconstitutional burden on her right to the free exercise of religion in this situation. In order to impose such a burden on the right to religious freedom under the First Amendment, the state would have to prove that it had a compelling government interest, which it could not prove in this case.

D. Free Speech Cases

Sometimes people claiming religious freedom rely on another clause of the First Amendment, the Freedom of Speech Clause. This occurs in the unusual situation where the state attempts to require its citizens to speak, as occurred in the famous flag salute case, West Virginia State Board of Education v. Barnette (1943). Justice Jackson explained that the purpose of a Bill of Rights was to withdraw certain subjects from political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.

The State of West Virginia required all students to share in the salute to the flag as part of school training in citizenship. The person saluting kept his right hand raised with palm turned up while the following was repeated: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all." Failure to salute was considered insubordination which resulted in the student's expulsion. Readmission to school was denied until the student complied. Meanwhile, the expelled child was unlawfully absent and could be proceeded against as a delinquent. His or her parents or guardians were liable to prosecution, and if convicted were subject to a fine not exceeding $50 and a jail term not exceeding thirty days. A lawsuit was brought against the state by members of the Jehovah's Witnesses who believed that the flag salute and pledge were against their religion.

The majority of the Court invalidated the required flag salute and pledge as an invasion of the student's right to think and believe free from state compulsion because it required the individual to communicate by word and sign his or her acceptance of the political ideas of the state. Under the First Amendment, the state cannot suppress an expression of opinion by an individual; it follows that the state also cannot force someone to speak involuntarily.

Handout # 3

WHAT'S THE DIFFERENCE BETWEEN A CULT AND A RELIGION?

In the aftermath of the Heaven's Gate mass suicide, there has been much debate in the media about what makes some religious groups "cults" while other, more traditional groups are called "religions".

Some people argue there is no difference:

> "What is a cult but a collection of believers, like the early Christians who have not yet achieved dominant status?"
>
> "Every religion is 'bizarre' for those who do not accept its strictures or practice its tenets."

Others argue there is a difference between a legitimate religion and a cult:

> "What makes a cult a cult is not its religion, whatever it is, but the practice of mind-control techniques, usually by a charismatic leader, that robs its members of their 'independence of thought'".
>
> "These techniques, which have nothing to do with spirituality and everything to do with psychological coercion, achieved through isolation and sensory deprivation are likened . . . to totalitarian 're-education camps'".

(This information is excerpted from the article, Heaven's Gate-gate, by Frank Rich, appearing in the New York Times, April 17, 1997, p. A21.)

Handout # 4

RELIGIOUS CULTS AND THE CONSTITUTION

Read each situation carefully. Using the information in Handout #1, develop the arguments the parties will make: one side will argue that the activities described below are protected by the U.S. Constitution (constitutional) while the other side will argue that they are prohibited by the Constitution (unconstitutional).

A. John Jones ran away from home at age 12 and joined a religious group, the Millennium 2000, which believed that the Earth was going to disappear in the year 2000. Do John's parents have the right to "rescue" John from the group and have him live at home or does John have the right to remain with the group and practice his religion?

B. Millennium 2000 members practice animal sacrifices during their religious ceremonies. A state law bans slaughtering of animals for any purpose other than for use as food. Is the state law constitutional?

C. Millennium 2000's application for tax-exempt status was turned down by the state revenue department on the ground that the organization was not a religion. Does the department's action violate the Constitution?

D. The leader of Millennium 2000 wrote a book, "This is It!", which claims that the Earth will explode on January 1, 2000, and that on December 31, 1999, all members should gather in one place and that he will then advise what action should be taken, "which could include the ultimate sacrifice." State law prohibits persons from attempting to commit suicide, assisting others in committing suicide or advocating that others should commit suicide. Just before "This is It!" was going to be distributed to book stores for sale, the state attorney general went to court to prevent its distribution. Can a court constitutionally prevent the distribution of the book?

E. The constitutionality of the Religious Freedom Restoration Act (RFRA) is now before the Supreme Court. The issue is whether Congress, by passing federal law, can overrule Smith, a Supreme Court decision interpreting the Constitution. What do you think?

ELEMENTARY ADAPTATION

I. LESSON DESCRIPTION

Students will become acquainted with the Free Exercise, Establishment and Free Speech Clauses of the First Amendment in the Bill of Rights. Students will relate Bill of Rights-related principles to their everyday lives.

II. OBJECTIVES

1. Students will understand the concept of rights and be introduced or reintroduced to the Bill of Rights.

2. Students will learn about the Free Exercise, Establishment and Free Speech Clauses of the First Amendment in the Bill of Rights.

3. Students will understand the responsibilities that they have at home, at school and in the community.

III. KEY CONCEPTS AND VOCABULARY

Bill of Rights
Establishment Clause
First Amendment
Freedom of Speech
Free Exercise Clause
religion
right

IV. STEPS AND ACTIVITIES

1. Write the word "right" on the board and ask students if they know what a right is. Accept answers from all volunteers, and then expand on the students' definitions by explaining that a right is something that we can do without being afraid of getting into trouble and without people telling us we can't do it. Explore with the students some examples of rights that they have.

2. Write the words "Bill of Rights" on the board. Ask students if any of them can explain what the Bill of Rights is. After students have had the opportunity to respond, explain that the Bill of Rights is a special set of rules that provides important rights. Explain that one of those rights is the freedom of religion and another right is freedom of speech. Depending on the background of the students, you may want to briefly explain that the rights of all Americans are contained in the Bill of Rights.

3. Ask students if they think freedom of speech means that we have a right to say anything we want. Most students will say "yes". Then ask them if it means that they can say "fire" in a crowded room or theater, even if there isn't a fire. Ask them what they think might happen if someone did yell "fire" in a crowded room or theater. After students have had an opportunity

to respond, explain that the Bill of Rights may not protect speech that hurts other people (such as yelling "fire" in a crowded theater).

4. Explain that the Bill of Rights also guarantees many other freedoms like freedom of religion. Ask students to define what the word religion means. After a discussion of the word religion, explain what is meant by the free exercise of religion -- the right to worship where you want and the right not to worship at all. Explain in simple terms the Establishment Clause -- the government cannot like one religion more than another.

5. Explain to students that with these important rights come certain responsibilities. Distribute the worksheet "My Rights and Responsibilities". Review the worksheet with the students and have them complete the worksheet one question at a time. After each question, ask a few students to share their answers with the entire class.

V. KEY CONCEPTS AND VOCABULARY DEFINED

Bill of Rights:	the first ten amendments to the United States Constitution, added in 1791.
Establishment Clause:	the portion of the First Amendment that prohibits government from favoring any religion.
First Amendment:	the first change made to the Constitution and the Amendment in which the rights of religion, speech, press, assembly, and petitioning the government are guaranteed.
Freedom of Speech:	the portion of the First Amendment that lets people say what they believe without the government stopping them.
Free Exercise Clause:	the portion of the First Amendment that protects a person's right to worship as she/he wants.
religion:	belief in God, a god or gods.
right:	a thing that someone is entitled to.

My Rights and Responsibilities

You have certain rights while you are at school. One of these rights is to have your very own desk. You also have responsibilities. Can you name one thing about your desk that you are responsible for? What is it?____
Good! Now list three other rights you have at school, then describe one responsibility you have for each of these rights.

RIGHTS	RESPONSIBILITIES
1. _________________________	1. _________________________
2. _________________________	2. _________________________
3. _________________________	3. _________________________

Now list three rights you have at home and three responsibilities. Remember that a right is something you have permission to do. For example, you may have the right to own a pet, but you also have the responsibility to feed it and take care of it.

RIGHTS	RESPONSIBILITIES
1. _________________________	1. _________________________
2. _________________________	2. _________________________
3. _________________________	3. _________________________

You also have rights and responsibilities in your community. Three of these rights are listed below. Describe three responsibilities you have in order to keep these rights.

I have the right to visit and enjoy parks, but I have the responsibility to____________________
____

I have the right to go shopping, but I have the responsibility to__________________________
____

I have the right to ride a bicycle, but I have the responsibility to_________________________
____

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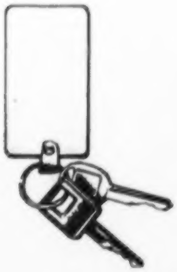
TEEN DRIVER'S LICENSE REGULATIONS



We are grateful for the assistance and expertise provided to us by Millie Aulbur, Field Director for Law-Related Education, the Missouri Bar, in preparing this lesson.

TEEN DRIVER'S LICENSE REGULATIONS

I. LESSON DESCRIPTION AND BACKGROUND INFORMATION

It is often said that Americans have a love affair with their cars. Certainly, one of the major rites of passage for teenagers in modern America is acquiring a driver's license. A recent article in *Newsweek* succinctly described the priority most teens give to attaining a driver's license: "As rites of pubescent passage go, a driver's license is up there with first kisses and senior proms."[1] This lesson explores how the states regulate driver's licenses in regard to teen drivers. Students will consider possible reasons for the regulations and the reasons for the variances among the states. Students will also explore a growing trend by states to have a graduated licensing process for teenagers. Who should be able to drive, when and where, is a subject about which most teenagers have an opinion and class discussion could be quite lively!

II. OBJECTIVES

1. Students will become aware of how requirements for attaining a driver's license vary throughout the United States.
2. Students will discuss possible policy considerations for the states' various regulations.
3. Students will debate the need for a graduated licensing process for teenagers.
4. Students will debate whether driving is a right belonging to the individual or a privilege granted by the government.
5. Students will discuss the pros and cons of establishing uniform driver's license regulations throughout the nation.

III. KEY CONCEPTS AND VOCABULARY

graduated license process
operator's license
privilege
right
unrestricted operator's license
zero tolerance

IV. STEPS AND ACTIVITIES

Materials needed: Sufficient handouts for students.

Prior to the lesson: Cut the information in Handout #2, License Bingo Information, into individual strips.

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[1] Daniel McGinn and Julie Edelson Halpert, *Teen Cruise Controls*, *Newsweek*, June 30, 1997, at 69.

Activity #1 As a class, study the terms listed in the "Key Concepts and Vocabulary Defined" section. Knowledge of these terms is necessary for the ensuing activities.

Activity #2 Give each student a copy of Handout #1, **LICENSE BINGO,** and one of the strips of information from Handout #2, **LICENSE BINGO INFORMATION**. Tell the students to keep the information on their paper strips a secret until the game begins. The object of License Bingo is to find the information about teenage driving regulations requested in each square. Students can find this information by sharing their paper strips with each other. When the students find an answer, they should write it in the appropriate square. Allow the students 6 minutes to mingle and find as many answers as they can on their bingo cards. (Teachers can decide whether and how to reward the student with the most right answers.)

Activity #3 Discuss the correct answers to License Bingo. For clarity and discussion, teachers may want to discuss the answers in the context of three main categories of information contained in the bingo boxes: a) historical information, b) general licensing information, and c) information of special interest to teen drivers. The categories and corresponding squares, along with the answers, are enumerated below. The discussion questions following the answers encourage students to examine possible policy considerations underlying the passage of a particular licensing regulation or law.

Note to the teacher: To facilitate discussion, you may want to split the class into groups of 4-5 students.

ALL OF THE FOLLOWING STATISTICAL AND REGULATORY INFORMATION WAS PROVIDED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION.

Historical Information:

Square 17 -- Missouri and Massachusetts were the first two states to require that drivers obtain licenses in order to drive. Both states passed laws to this effect in 1903.

Square 22 -- Rhode Island was the first state to require that its drivers pass a driver's examination to obtain a driver's license. Rhode Island adopted this regulation in 1908.

General Licensing Information:

Square 2 -- All 50 states require photographs for drivers under 21. In New Jersey, photographs are optional for all drivers over 21.

Discussion questions:
Why should states require photographs on drivers' licenses? What interests do you think the states have in requiring photographs? Why do you think New Jersey requires photos only for drivers under 21?

Square 8 -- Nine million.

Square 12 -- All 50 states require drivers to have an operator's license.

Discussion questions:
Why do you think all 50 states and the District of Columbia now require all drivers to obtain an operator's license? What interests do the states have in requiring all of its drivers to be licensed?

Square 13 -- Thirty-eight states and the District of Columbia require vision tests for obtaining a license and for subsequent renewals of the license. In all 38 states, the vision test is administered at the licensing bureau at the time the driver makes application for a license or for renewal of a license.

Discussion question:
It is obvious why a vision test is part of the licensing process. Adequate sight is essential for safe driving! Why do you think the other 12 states do not have such a requirement?

Square 18 -- Only 10 states use a person's social security number as the person's driver's license number.

Discussion question:
What are the advantages and disadvantages to using social security numbers as drivers' license numbers?

Square 19 -- Massachusetts charges $50.00. The lowest fee is charged by Indiana, which is $10.00.

Square 23 -- All the states and the District of Columbia have organ donor provisions on their licenses.

Discussion questions:
Name five reasons that a driver's license card is an ideal place for organ donor provisions. Can you think of any disadvantages to such a system?

Information of Special Interest to Teen Drivers:

A. Varying age requirements

Note to the teacher: When discussing the answers with the students, be sure to include the time restriction information. This will assist students in discussing possible policy considerations for some of the regulations.

Square 1 -- Some states issue special "juvenile" licenses to drivers 13-18 with several restrictions on the license. However, two states issue standard or regular licenses at age 15 without requiring driver's education. Montana has no restrictions for its 15-year-old drivers. Hawaii issues a "special license" at age 15 that allows the driver to go anywhere at anytime. However, if the driver's license is revoked for any reason, the driver will not be given a new license until age 18.

Square 4 -- The state of Washington has no minimum age for persons operating farm vehicles on the family farm.

Square 9 -- Nevada allows a special license for 14 and 15-year-olds to transport handicapped persons.

Square 10 -- Wyoming allows 14 and 15-year-olds to drive anywhere within a 50 mile radius of their homes from the hours of 5 a.m. to 8 p.m.

Square 14 -- Minnesota allows 15-year-old farm teenagers to drive during daylight hours within a 20 mile radius of their farm homes.

Square 15 -- New Mexico lets 13 to 15-year-olds get licenses to drive motor scooters and mopeds anywhere at anytime. New Mexico also will issue to a 15-year-old an unrestricted regular license if the driver has completed drivers' education.

Square 16 -- Iowa, Kansas, Nebraska and Nevada allow 14-year-olds to drive from home to school and back. Kansas has the most liberal policy--there are no time restrictions. In addition, 14 and 15-year-olds may drive to work and back. In Iowa, 14-year-olds may drive to school only during the hours of 6 a.m. to 10 p.m. In Nebraska, the driver must live at least 1.5 miles from school to qualify and can only transport family members to school. In Nevada, the licensing department sets the route the 14-year-old may travel and the driver may drive only during regular school hours.

Four other states allow 14 and 15-year-olds to drive to and from school under special conditions. In Wisconsin, 14 and 15-year-olds may drive to school and work if the parents demonstrate there is a necessity. Oregon, Maine and Michigan also have provisions for driving to school before age 16 if no other transportation is available.

Square 20 -- Massachusetts issues a juvenile license at 16 1/2, the only restriction being that the driver must be accompanied by a parent or guardian between 1 and 4 a.m. A regular license is not issued until age 18. New Jersey, New York and Pennsylvania grant regular licenses at age 17 if the driver has taken driver's education; otherwise a driver must wait until age 18. Some states, such as California, have provisional regular licenses for 16 and 17-year-olds that may contain restrictions if the driver has traffic violations or is involved in an accident. A regular license will be issued at age 18.

Square 21 -- South Dakota.

Square 25 -- Forty-four of the 50 states allow some variation of the regular license at age 16.

Discussion question:
Why do you think age 16 is the age at which most states allow teens to drive in some capacity?

List all the states that allow 14 and 15-year-olds, and even 13-year-olds, to drive. What similarities do you see in these states? (Teachers may want to use a United States map and mark the states listed by students. From the map, students should be able to draw some conclusions about the rural nature of most of these states.) Why do you think lawmakers in these states allow teens to drive at an early age? Do you agree with these laws? Why or why not? Contrast these states with the four states that have set the ages of 17 and 18 as minimum driving ages.

What do you notice in common about all of the time restrictions set by the states? Why do you think these hours were chosen? What interest(s) do you think the states have in setting these time restrictions (i.e., safety)?

B. Information Pertaining to a Graduated Licensing Process and Other Information

Note to the teacher: Graduated license processes are becoming more common and have been criticized by teenage drivers. After discussing the right answers, consider dividing the class into two groups to debate the various measures of graduated licensing. See the discussion box at the end of this section for possible debate questions.

Square 3 -- Twenty-one states require driver's education for drivers under 21. New York, Louisiana and Idaho require it for all new drivers, regardless of age.

Square 5 -- More fatal crashes occur in the 15-24 age group than any other age group.

Square 6 -- North Carolina recently passed this legislation. At least five other states are considering similar legislation.

Square 7 -- Maryland. Pennsylvania has an even stricter law--NO ONE under age 18 may drive from midnight to 5 a.m., and there are NO exceptions.

Square 11 -- In Georgia, a teenage driver under age 18 may drive with only two other teenagers in the car.

Square 24 -- Thirty-seven states have "zero tolerance" in regard to alcohol consumption by teen drivers.

Additional information and discussion questions:
The graduated license process is designed to ease new drivers into the driving process and hopefully minimize the risk of serious harm to teen drivers and others. Requiring drivers' education, restricting the hours that teenagers may drive and restricting the number of teenage passengers in a car with a teen driver are some of the measures states have adopted as part of the graduated licensing process. The most common graduated license process is allowing a teen driver to drive for a certain period of time only when a parent or guardian is in the car with the teen driver. The "zero tolerance" laws are not part of the graduated license process, but are an attempt to stem the rising numbers of teens killed each year in crashes caused by teen drinking.

Are graduated license measures necessary? Are they reasonable? Consider the statistic that drivers from ages 15-24 have the most fatal car crashes of all age groups. States that have adopted graduated license processes have experienced as high as a 16% drop in fatal teen crashes. Allan Williams, a researcher, opines that the measures are reasonable, "Sixteen-year-olds have a crash rate three times as high as 18 and 19-year-olds. They're also more likely to [get into an accident] while driving a car filled with their friends."[2] In the same *Newsweek* article, Brian O'Neill of the Insurance Institute for Highway Safety states, "Put four teenagers in a car and you have a prescription for immature, irresponsible behavior." Critics of the graduated license process argue that restrictions on the number of passengers in a car will eliminate age-old traditions like double-dating and discourage car pooling for athletic events, musical practices, school service projects, etc. The fear is also that such measures would result in less teenagers being able to ride in the cars of designated drivers after drinking parties.

What are your reactions to these various graduated license measures? Are some of them reasonable while others are not? Is "zero tolerance" unfairly targeting teen drivers? Do you think any of the measures mentioned above unfairly single out teenagers? How would you change the laws? How does your state treat teen drivers under the law? Why do you think those laws were passed in your state?

Activity #4 Ask the students if they think driving is a right or privilege? For this activity, the students could divide into teams and debate the issue or use the question for class discussion. To begin the discussion, the teacher may want to share with the students the following "food for thought": For many years, states have asserted driving is a privilege. However, in today's current society where most people must drive to school or work, many people are asserting it is a right. Perhaps some states are tacitly agreeing by allowing drivers whose licenses have been suspended to continue to drive to work. Remind the students of the many regulations and laws they have examined in regard to teen drivers. Could a right have so many restrictions?

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[2] Daniel McGinn and Julie Edelson Halpert, *Teen Cruise Controls*, *Newsweek*, June 30, 1997, at 69.

Activity #5 As a debriefing exercise, ask the students whether they think there would be advantages to Congress adopting uniform drivers' license requirements that every state would follow. (The teacher may want to advise the students that under the Tenth Amendment, Congress probably could not take the power away from the states to regulate their drivers. However, for this exercise, the assumption is that Congress could do so.) What would be the disadvantages?

V. KEY CONCEPTS AND VOCABULARY DEFINED

graduated license process:	a system in which states grant privileges to teen drivers in stages in order to ease the inexperienced driver into driving. Example: A 16-year-old is issued a license. For the first three months, the teen driver must drive with a parent or guardian. For three months after that, the teen driver may not drive between midnight and 5 a.m. Until age 18, the teen driver can drive with only two other teenagers in the car.
operator's license:	term used by most states to describe a standard or regular driver's license. Allows the licensee to drive non-commercial vehicles.
privilege:	a special advantage granted to an individual or class of people.
right:	something to which a person is entitled, which is often guaranteed by a constitution or by statute.
unrestricted operator's license:	a license that does not place special limitations on the driver.
zero tolerance:	a term used to describe laws which provide that any amount of alcohol or illegal substance detected in a driver under age 21 will result in the driver losing his or her driver's license, without any exceptions.

VI. ADDITIONAL ACTIVITIES FOR EXPANSION AND ENRICHMENT

1. Invite an individual from the licensing agency to discuss the state's driver's license regulations.

2. Write letters to those states that allow 14 and 15-year-olds to drive to school or work if there is a "hardship". Ask the state licensing agency to give examples of what designates a hardship.

Handout #1

LICENSE BINGO[1]

The two states that allow 15-year-olds to obtain a regular license. 1	Number of states requiring a photograph on the license. 2	Number of states in which drivers under 21 must take driver's education. 3	This state has no minimum age for a person to operate a farm vehicle. 4	The age group that has the most deaths caused by auto accidents. 5
The state that does not allow new drivers to drive after 9:00 p.m. for the first six months after getting a license. 6	The state that requires drivers under age 18 to drive with a licensed driver over age 21 between midnight and 5 a.m. 7	Approximate number of licensed drivers under age 20 in the United States. 8	The state that allows a special license for 14-year-olds to transport handicapped persons. 9	The state that allows 14-year-olds to drive anywhere within a 50 mile radius of their homes. 10
This state restricts the number of teens in the car with a teen driver. 11	Number of states requiring its drivers to have licenses. 12	Number of states that require a vision test for license renewal. 13	The state that allows teens who live on a farm to drive at age 15 within 20 miles of farmhouse. 14	This state allows 13-year-olds to obtain licenses to drive motor scooters and mopeds. 15
The 4 states that allow 14-year-olds to drive back and forth to school. 16	The first two states to require that drivers have a license--did so in 1903. 17	Number of states where license # is Social Security number. 18	Charges $50 for a first time license--the highest in the nation. 19	The 4 states in which a driver must be 17 or 18 to get a regular license. 20
This state allows 14-year-olds to drive anywhere between 6 a.m. and 8 p.m. 21	The first state to require a driver's examination in order to get a license--did so in 1908. 22	Number of states that have organ donor cards on back of drivers' licenses. 23	Number of states having "zero tolerance" for alcohol use among teen drivers. 24	The age at which most states begin to allow some kind of driving privileges. 25

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[1] All of the information contained in the answers was provided by the United States Department of Transportation, Federal Highway Administration.

Handout #2

LICENSE BINGO INFORMATION

Note to teachers: Cut the following information into strips and give a strip to each student. Ask the students to keep their information secret until License Bingo begins.

All 50 states require drivers' licenses to operate a motor vehicle.

New Mexico allows 13-year-olds to get licenses to operate mopeds and motor scooters.

Missouri and Massachusetts were the first states to require drivers' licenses.

Rhode Island was the first state to require a driver's examination.

There are 9 million drivers under age 20 in the United States.

---

38 states require a vision test to get a license and to renew it.

Hawaii and Montana issue regular licenses to 15-year-olds.

Minnesota allows 15-year-olds who live on the farm to drive within a 20 mile radius of their house during daylight hours.

The state of Washington has no minimum age limit for operating a farm vehicle.

Ten states use Social Security numbers for driver's license numbers.

All 50 states have organ donor cards on the driver's license card.

Massachusetts charges $50.00 for a first time license.

Thirty-seven states have zero tolerance laws.

Nevada allows a special license for 14-year-olds to transport handicapped persons.

Wyoming allows 14-year-olds to drive anywhere within a 50 mile radius of their homes during the hours of 5 a.m. to 8 p.m.

Iowa, Kansas, Nebraska and Nevada allow 14-year-olds to drive to school.

Massachusetts, New Jersey and New York do not issue a regular license under any circumstance until age 17. Pennsylvania does not issue a regular license until age 18.

South Dakota allows 14-year-olds to drive anywhere between the hours of 6 a.m. and 8 p.m.

Sixteen is the most common age at which states allow people to drive.

---

21 states require drivers' training for drivers under age 21.

The age group that has the most fatal car crashes is 15-24.

North Carolina has a curfew of 9 p.m. for the first six months a teenager has a driver's license.

Maryland requires any driver under age 18 to drive with a licensed driver over 21 in the car between the hours of midnight and 5 a.m.

Georgia will allow a teenage driver to transport only two other teenagers.

All 50 states require photographs on drivers' licenses for drivers under 21.
